

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

---

In re Applications of	)	
	)	
	)	
AT&T Inc., Leap Wireless International,	)	WT Docket No. 13-193
Inc., Cricket License Company, LLC and	)	
Leap Licenseco, Inc. Seek Consent to the	)	ULS File Nos. 0005860676, 0005860985,
Transfer of Control of AWS-1 Licenses, PCS	)	0005861153, 0005879272, ITC-T/C-
Licenses, and Common Carrier Fixed Point	)	20130801-00207, ITC-T/C-20130801-00208
To Point Microwave Licenses, and	)	
International 214 Authorizations, and the	)	
Assignment of One 700 MHz License	)	

---

**PETITION TO CONDITION**

Steven K. Berry  
Rebecca Murphy Thompson  
C. Sean Spivey  
Competitive Carriers Association  
805 15th Street, NW  
Suite 401  
Washington, DC 20005  
(202) 449-9866

## TABLE OF CONTENTS

<b>INTRODUCTION AND SUMMARY .....</b>	<b>3</b>
<b>I. COMPETITIVE SAFEGUARDS ARE NECESSARY TO PREVENT HARM TO THE PUBLIC INTEREST .....</b>	<b>3</b>
<b>II. THE WIRELESS MARKETPLACE CONTINUES TO SLIP TOWARDS A DUOPOLY DOMINATED BY AT&amp;T AND VERIZON.....</b>	<b>7</b>
<b>III. THE COMMISSION SHOULD PROMPTLY COMPLETE ITS MOBILE SPECTRUM HOLDINGS PROCEEDING .....</b>	<b>12</b>
<b>IV. THE COMMISSION MUST IMPOSE TRANSACTION-SPECIFIC CONDITIONS TO PROMOTE COMPETITION AND THE PUBLIC INTEREST .....</b>	<b>14</b>
<b>A. Spectrum Divestitures Are Appropriate Where AT&amp;T Exceeds the Spectrum Threshold .....</b>	<b>15</b>
<b>B. AT&amp;T Must Continue To Provide Voice and Data Roaming Arrangements At Least As Favorable As Those Provided To Its Fellow Applicants' Competitors .....</b>	<b>15</b>
<b>CONCLUSION .....</b>	<b>18</b>

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

---

In re Applications of	)	
	)	
	)	
AT&T Inc., Leap Wireless International,	)	WT Docket No. 13-193
Inc., Cricket License Company, LLC and	)	
Leap Licenseco, Inc. Seek Consent to the	)	ULS File Nos. 0005860676, 0005860985,
Transfer of Control of AWS-1 Licenses, PCS	)	0005861153, 0005879272, ITC-T/C-
Licenses, and Common Carrier Fixed Point	)	20130801-00207, ITC-T/C-20130801-00208
To Point Microwave Licenses, and	)	
International 214 Authorizations, and the	)	
Assignment of One 700 MHz License	)	
	)	

---

**PETITION TO CONDITION**

Competitive Carriers Association (“CCA”) hereby respectfully petitions the Federal Communications Commission (the “FCC” or “Commission”) to adopt competitive safeguards associated with the proposed license transfers (the “Leap Transaction”) among AT&T Inc., (“AT&T”), Leap Wireless International, Inc. (“Leap”), Cricket License Company, LLC (“Cricket”), and Leap Licenseco, Inc. (“Leap Licenseco”) (collectively, the “Applicants”).<sup>1</sup>

**INTRODUCTION AND SUMMARY**

CCA is an association representing more than 100 competitive wireless providers across the United States. Most of CCA’s members individually serve fewer than 50,000 customers. CCA’s role as the leading voice for competitive carriers on legal and policy issues gives it a

---

<sup>1</sup> *In the Matter of AT&T Inc., Leap Wireless International, Inc., Cricket License Company, LLC and Leap Licenseco, Inc. Seek Consent to the Transfer of Control of AWS-1 Licenses, PCS Licenses, and Common Carrier Fixed Point To Point Microwave Licenses, and International 214 Authorizations, and the Assignment of One 700 MHz License, DA 13-1831, Public Notice, WT Docket No. 13-193 (rel. Aug. 28, 2013) (“Public Notice”).*

unique perspective on the substantial harms that will accrue to competitive carriers if the Leap Transaction is allowed to proceed without conditions—such as those proposed by CCA—to mitigate the anti-competitive harms associated with the Leap Transaction. As a result, CCA is a party in interest with standing to submit this Petition.<sup>2</sup>

The Commission finds itself at a competitive crossroads with the review of yet another secondary market transaction involving AT&T, one of the two dominant wireless carriers. AT&T has proposed to acquire all of Leap's wireless properties, spectrum licenses, network assets, retail stores, and approximately five million subscribers. As a result of this acquisition, AT&T will gain valuable PCS and AWS-1 spectrum covering 137 million people, adding to its already extensive spectrum war chest. Approval of the Leap Transaction will remove the sixth largest competitor and roaming partner from the wireless market, and further accelerate the industry's descent into a duopoly.

The Twin Bells have come to dominate the wireless industry by any conceivable metric – including spectrum holdings, share of subscribers, and share of revenues – and have used their dominant positions to impede competition and impair rivals' access to critical inputs. As the FCC and other policymakers have noted, AT&T and Verizon have significantly improved their dominant market positions through the acquisition of coveted spectrum resources and numerous smaller wireless carriers.

To effectively combat the anti-competitive effects of this industry consolidation, and specifically this transaction, the Commission should focus on promptly completing its mobile spectrum holdings proceeding. In particular, the FCC should adopt CCA's proposed spectrum screen modifications to reflect the current wireless marketplace and strengthen the Commission's

---

<sup>2</sup> 47 C.F.R. § 1.939(a).

spectrum policies. Moreover, the Commission must impose appropriate transaction-specific conditions to further protect competition, mitigate anti-competitive harms and promote the public interest. First, CCA requests that the Commission conduct a full review of AT&T's spectrum use in markets across the nation, and where (in the aggregate) AT&T exceeds the spectrum screen, require AT&T to divest comparable spectrum to that which it is acquiring. Second, CCA urges the Commission to condition approval of the Leap Transaction on AT&T committing to offer 3G and 4G LTE voice and data roaming services under the same terms and conditions negotiated by competitors with Leap. Only with these conditions, specifically designed to mitigate the transaction-specific harms related to the Leap Transaction, should the Commission approve AT&T's acquisition of Leap.

## **DISCUSSION**

### **I. COMPETITIVE SAFEGUARDS ARE NECESSARY TO PREVENT HARMS TO THE PUBLIC INTEREST**

AT&T has been on a buying spree since its failed bid for T-Mobile. Due to a lack of competition in the wireless industry, Leap Wireless, the nation's sixth largest facilities-based wireless provider, is the next victim to fall prey to AT&T's spectrum grab. The Leap Transaction, if approved, will include all of Leap's wireless properties, spectrum licenses, network assets, retail stores, and approximately five million subscribers.<sup>3</sup> The transaction will provide AT&T with PCS and AWS-1 spectrum, which is intended to enhance AT&T's LTE deployment.<sup>4</sup> AT&T once again argues that this transaction should be quickly granted by the

---

<sup>3</sup> Press Release, AT&T to Acquire Leap Wireless, July 12, 2013, *available at* <http://www.att.com/gen/press-room?pid=24533&cdvn=news&newsarticleid=36744>.

<sup>4</sup> *Public Notice 2*.

Commission – using its usual “nothing to see here” approach. However, while this transaction may benefit AT&T, without competitive safeguards, it could harm the public interest.

The most apparent and detrimental harm will be AT&T’s increased spectrum aggregation. If approved as proposed, the Leap Transaction would result in Leap becoming a wholly-owned subsidiary of AT&T, whereby AT&T would acquire 10-50 MHz of spectrum in 1,354 counties in 356 CMAs nationwide.<sup>5</sup> In markets of “geographical overlap, the merged entity would hold 46-180 megahertz of spectrum covering approximately 137 million people, or approximately 44 percent of the United States population.”<sup>6</sup> This Leap Transaction would exacerbate AT&T’s dominant spectrum position and further cement a wireless duopoly leaving carriers other than the AT&T and Verizon – the Twin Bells – unable to compete for consumers on anything resembling a level playing field.

Further, AT&T’s acquisition of Leap will remove yet another competitor from the market, and notably, another top-10 competitor. In previous evaluations of proposed license transfers, the Commission has considered the antitrust guidelines established by the Department of Justice (“DOJ”) and Federal Trade Commission (“FTC”) while assessing the effect the transactions will have on competition in the wireless marketplace (“*DOJ Horizontal Merger Guidelines*”). “[M]erger analysis does not consist of uniform application of a single methodology,”<sup>7</sup> and both the Commission and DOJ recognize the importance of evaluating merger transactions and other spectrum acquisition arrangements through a fact-specific process. These guidelines are designed around the understanding that “mergers should not be permitted to

---

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> DEPARTMENT OF JUSTICE & FEDERAL TRADE COMMISSION, HORIZONTAL MERGER GUIDELINES, § 1 (Aug. 19, 2010) available at [www.justice.gov/atr/public/guidelines/hmg-2010.pdf](http://www.justice.gov/atr/public/guidelines/hmg-2010.pdf) (“*DOJ Horizontal Merger Guidelines*”).

create, enhance, or entrench market power or to facilitate its exercise” and declare that “[a] merger can enhance market power simply by eliminating competition between the merging parties.”<sup>8</sup> The Commission has previously applied these merger guidelines and has recognized that it may “take[] a more extensive view of potential and future competition and the impact on the relevant market, including longer-term impacts.”<sup>9</sup>

One of the “types of evidence” that the *DOJ Horizontal Merger Guidelines* incorporate is the disruptive role of a merging party.<sup>10</sup> The Guidelines “consider whether a merger may lessen competition by eliminating a ‘maverick’ firm, i.e., a firm that plays a disruptive role in the market to the benefit of customers.”<sup>11</sup> Leap is and has been a “disruptive” competitor in the market. Accordingly, the Commission must consider the loss of Leap and the impact that this transaction will have on the market.

Although AT&T attempts to deny that Leap is a competitor or notable market participant,<sup>12</sup> previous AT&T statements indicate otherwise. In AT&T’s previous attempt at acquiring a top-ten competitor, it recognized the “increased competitive threats from rapidly

---

<sup>8</sup> *Id.* at § 1.

<sup>9</sup> *Application of AT&T Inc. and Qualcomm Incorporated For Consent To Assign Licenses and Authorization*, WT Docket No.11-18, Order, FCC 11-188, ¶ 25 (rel. Dec 22, 2011) (“*AT&T/Qualcomm Order*”).

<sup>10</sup> *DOJ Horizontal Merger Guidelines* § 2.1.5.

<sup>11</sup> *Id.* at § 2.1.5. An example of such a firm’s influence can be seen “if one of the merging firms has a strong incumbency position and the other merging firm threatens to disrupt market conditions with a new technology or business model, this merger can involve the loss of actual or potential competition.” *Id.*

<sup>12</sup> *See AT&T Inc. – Leap Wireless International, Inc. Application*, ULS File Nos. 0005860676, 0005860985, 0005861153, 0005879272, ITC-T/C-20130801-00207, ITC-T/C-20130801-00208 Exhibit 1, at 25 (“Even a brief survey of the products offered by AT&T, Leap and other wireless providers demonstrates that AT&T and Leap are not close competitors.”) (“*AT&T/Leap Public Interest Statement*”).

growing mavericks like MetroPCS and Leap.”<sup>13</sup> Furthermore, AT&T lamented that these competitors were “taking an ‘increasing percentage’ of subscribers from ‘the postpaid contract world,’ prompting other major providers, including AT&T, to make competitive responses.”<sup>14</sup> For instance, “because of [Leap’s and MetroPCS’s] growing success, AT&T launched its first no-contract smartphone offer – the LG Thrive – on April 17, 2011.”<sup>15</sup>

Since that time, MetroPCS has exited the market through a merger, leaving Leap as the only AT&T-recognized maverick operator left. Of course, AT&T now conveniently claims that Leap no longer poses any competitive concerns to AT&T, despite the obvious fact that it is seeking to eliminate the competitive threat.

Eliminating Leap from the wireless market will not only remove a competitor, but will also eliminate an important roaming partner that is known for providing reasonable voice and data roaming to other carriers. The Commission has repeatedly recognized that roaming agreements “can be critical to providers remaining competitive in the mobile services marketplace.”<sup>16</sup> Further, the availability of roaming capability is, and will continue to be, a critical component that enables consumers to have a competitive choice among wireless carriers. Indeed, access to roaming is “particularly important for consumers in rural areas – where mobile

---

<sup>13</sup> See Acquisition of T-Mobile USA, Inc., Description of Transaction, Public Interest Showing and Related Demonstrations, 13 (filed April 21, 2011) (emphasis added) (“*AT&T/TMO Public Interest Statement*”).

<sup>14</sup> *Id.* at 82. Indeed, AT&T noted its need to “aggressively compete” with “the highly disruptive ‘all you can eat’ carriers” such as Leap.

<sup>15</sup> See Declaration of David Christopher, Attachment to *AT&T/TMO Public Interest Statement*, ¶ 8.

<sup>16</sup> *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Second Report and Order, 26 FCC Rcd 5411, ¶ 15 (2011) (“*Data Roaming Order*”). *Applications of AT&T Inc. and Atlantic Tele-Network, Inc. For Consent To Transfer Control Of and Assign Licenses and Authorizations*, WT Docket No. 13-54, Memorandum Opinion and Order, DA 13-1940 at ¶¶ 95-96 (rel. Sept. 20, 2013) (“*AT&T/Alltel Order*”).

data services may solely be available from small rural providers.”<sup>17</sup> Many competitive carriers are not nationwide service providers, and, in an effort to compete with AT&T’s and Verizon’s national footprints, rely on voice and data roaming arrangements to fill the gaps in their service areas.

Despite the Commission’s efforts to promote commercially reasonable voice and data roaming arrangements among CMRS carriers, competitive carriers continue to struggle to negotiate fair and reasonable roaming agreements. If this transaction is approved, an important roaming partner will be removed from the market, thus providing AT&T even greater control over an already-broken wholesale roaming market and resulting in higher roaming rates for carriers, a cost that will ultimately to be passed down to the American consumer. As discussed in detail below, the Commission must adopt pro-competitive conditions on the Leap Transaction to prevent these harms against the public interest, and the wireless industry as a whole.

## **II. THE WIRELESS MARKETPLACE CONTINUES TO SLIP TOWARDS A DUOPOLY DOMINATED BY AT&T AND VERIZON**

Due to rapid consolidation, as CCA has frequently lamented, the wireless industry is careening down a path to duopoly. Over the past decade, AT&T and Verizon have bolstered their increasing dominance through the acquisition of coveted spectrum resources and numerous smaller wireless carriers, aided by Commission policies that have allowed the Twin Bells to gain significant competitive advantages over smaller carriers.

AT&T’s and Verizon’s marketplace dominance is due in significant part to their dominant spectrum positions. The Commission has long recognized that “[s]pectrum is the

---

<sup>17</sup> *Data Roaming Order* ¶ 30.

lifeblood of the wireless industry”<sup>18</sup> and is “critical for promoting the competition that drives innovation and investment.”<sup>19</sup> At the same time, the increasing demand for mobile broadband services in recent years has “made spectrum a critically scarce resource” for wireless carriers.<sup>20</sup> When the majority of the available spectrum resources are controlled by two carriers, it stymies the ability of other industry stakeholders to provide competitive services to consumers, which diminishes competition and ultimately harms the public interest.

In the *Fourteenth Wireless Competition Report*, the Commission, for the first time, was unable to certify that the wireless industry was characterized by “effective competition.”<sup>21</sup> The FCC based its finding in part on the startling increase in market concentration measured by the Herfindahl-Hirschman Index (“HHI”). The FCC found that the industry was highly concentrated, and the Commission’s specifically recognized AT&T’s and Verizon’s dominant market share.<sup>22</sup> The *Fifteenth Wireless Competition Report* unfortunately observed a similar trend, and the Commission again was unable to certify that the wireless industry was characterized by effective competition, as demonstrated by the increasing HHI.<sup>23</sup> Most recently, in the *Sixteenth Wireless Competition Report*, the Commission stated that from 2003 to year-end

---

<sup>18</sup> Prepared Remarks of Chairman Julius Genachowski, “Innovation in a Broadband World,” The Innovation Economy Conference, Dec. 1, 2009.

<sup>19</sup> *Policies Regarding Mobile Spectrum Holdings*, Notice of Proposed Rulemaking, 27 FCC Rcd 11710, ¶ 4 (2012) (“*Mobile Spectrum Holdings NPRM*”).

<sup>20</sup> Ex Parte Submission of the U.S. Dep’t of Justice, WT Docket No. 12-269, 9 (filed Apr. 11, 2013) (“*DOJ Ex Parte Submission*”).

<sup>21</sup> See *Annual Report and Analysis of Competitive Market Conditions With Respect To Mobile Wireless, Including Commercial Mobile Services*, Fourteenth Report, 25 FCC Rcd 11407, ¶¶ 3, 4 (2010) (“*Fourteenth Wireless Competition Report*”).

<sup>22</sup> *Id.* at ¶¶ 3, 4.

<sup>23</sup> See *Annual Report and Analysis of Competitive Market Conditions With Respect To Mobile Wireless, Including Commercial Mobile Services*, Fifteenth Report, WT Docket No. 10-133 (June 27, 2011) (“*Fifteenth Wireless Competition Report*”).

2011, the average HHI had increased 722 points.<sup>24</sup> An HHI greater than 2500 indicates the market is “highly concentrated”. The wireless industry, at 2873, or 373 points higher than the threshold, continued to be classified as highly concentrated.<sup>25</sup> While HHI levels continue to provide an accurate and informative benchmark of industry concentration, the FCC based its conclusion on other data provided in the Commission’s most recent wireless competition report. For instance, the *Sixteenth Wireless Competition Report* also concluded that Verizon and AT&T together hold approximately 90 percent of spectrum in the 800 MHz Cellular Band, and account for approximately 67 percent of total wireless service revenue.<sup>26</sup> The Twin Bells also control a vast majority of the spectrum below 1 GHz<sup>27</sup> – spectrum that has “superior propagation characteristics, permitting better coverage in both rural areas and buildings.”<sup>28</sup> This report also found that AT&T and Verizon continue to have the largest number of net subscriber additions each quarter, while other carriers face mounting losses. Similarly, the report concluded that AT&T and Verizon regularly enjoy EBITDA/OBITDA margins that are higher than those of other carriers, and thus, the profitability gap continues to widen.<sup>29</sup> For the third report in a row, the Commission was unable to certify that the wireless industry was characterized by effective competition.<sup>30</sup>

---

<sup>24</sup> *Annual Report and Analysis of Competitive Market Conditions With Respect To Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 11-186, Sixteenth Report, FCC 13-34, ¶ 59 (rel. Mar. 21, 2013) (“*Sixteenth Wireless Competition Report*”).

<sup>25</sup> *Id.* at ¶ 54.

<sup>26</sup> *Id.* at ¶¶ 2, 52.

<sup>27</sup> The Report found that “Verizon Wireless holds 45 percent of the MHz-POPs of Cellular and 700 MHz spectrum combined, while AT&T holds approximately 39 percent.” *Sixteenth Wireless Competition Report* ¶ 2.

<sup>28</sup> *DOJ Ex Parte Submission* 12.

<sup>29</sup> *Sixteenth Wireless Competition Report* ¶ 289.

<sup>30</sup> *Id.* at ¶ 2.

These findings should come as no surprise to the Commission. The industry's consolidation has been a common theme in the wireless industry over the past decade. Unfortunately for competitive carriers, the Twin Bells also dominate the secondary markets for spectrum. As of June 2013, AT&T and Verizon accounted for 60 percent of all assignment and transfer applications filed so far in 2013, and over 80 percent of all license applications involving spectrum below 1 GHz. As a consequence, competitive carriers are unable to obtain the resources that they need to effectively compete in today's wireless market.

Indeed the Government Accountability Office ("GAO") has found that the "primary change in the wireless industry" over the last decade was "industry consolidation," noting that from 2006 to 2009, AT&T and Verizon increased their subscriber market share by a combined 30 percent.<sup>31</sup> The GAO concluded that "a series of mergers and acquisitions" had played a large role in the consolidation trend, specifically recognizing Cingular's acquisition of AT&T in 2004, AT&T's acquisition of Dobson in 2007, Verizon's acquisition of ALLTEL in 2008 and AT&T's acquisition of Centennial in 2009.<sup>32</sup> In addition to these transactions, numerous other competitive and regional carriers have exited the market over the past decade after being gobbled up by AT&T and Verizon, including Rural Cellular Corporation, Aloha Wireless, Edge Wireless, Cal North Wireless, Mohave Wireless, and SureWest Wireless.<sup>33</sup> In fact, AT&T and Verizon

---

<sup>31</sup> U.S. Gov't Accountability Office, GAO-10-779, *Telecommunications: Enhanced Data Collection Could Help FCC Better Monitor Competition in the Wireless Industry*, 10, 13 (2010), available at <http://www.gao.gov/products/GAO-10-779> ("GAO Report").

<sup>32</sup> *Id.* at 11.

<sup>33</sup> See *Applications of Cellco Partnership d/b/a/ Verizon Wireless and Rural Cellular Corporation for Consent To Transfer Control of Licenses, Authorizations, and Spectrum Manager Leases*, Memorandum Opinion and Order, 23 FCC Rcd 12463 (2008); *Application of Aloha Spectrum Holdings Co. LLC and AT&T Mobility II LLC Seeking FCC Consent for Assignment of Licenses and Authorizations*, Memorandum Opinion and Order, 23 FCC Rcd 2234 (2008); Press Release, AT&T Completes Acquisition of Edge Wireless to Enhance Wireless

(continued...)

account for 80 percent of industry revenue, which is higher than the market share for the two top firms in other consolidated industries.<sup>34</sup> What was once a robustly competitive industry a decade ago has effectively become a duopoly, as the Twin Bells dominate the industry by any conceivable metric, whether subscriber count, revenues, earnings, or holdings of valuable “beachfront” spectrum.

This march towards duopoly continues with a familiar drumbeat. The acquisition of Leap, which sells its wireless service through the prepaid brand Cricket, will allow AT&T, the second largest U.S. wireless carrier, to expand its reach deeper into the prepaid markets in

---

(...continued)

Coverage, Apr. 18, 2008, available at <http://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=25521>; Press Release, Verizon Wireless Purchases Cal North Wireless in Northern California, Feb. 16, 2006, available at <http://news.verizonwireless.com/news/2006/02/pr2006-02-16c.html>; Press Release, Verizon Wireless Completes Purchase of Mohave Wireless, Apr. 1, 2013 available at <http://news.verizonwireless.com/news/2013/04/pr2013-04-01j.html>; Press Release, Verizon Wireless Purchases SureWest Communications’ Wireless Assets in Northern California, May 9, 2008 <http://news.verizonwireless.com/news/2008/05/pr2008-05-09.html>. Citing a lack of spectrum resources and a lack of access to roaming at commercially reasonable rates, other carriers such as MetroPCS and SunCom also have left the wireless marketplace. *See e.g., Applications of Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc. For Consent To Transfer Of Control Of Licenses and Authorizations*, WT Docket No. 12-301, Memorandum Opinion and Order, DA 13-384 (rel. Mar. 12, 2013) (“*MetroPCS/T-Mobile Order*”); *Applications of T-Mobile USA, Inc. and SunCom Wireless Holdings, Inc., For Consent To Transfer Control of Licenses and Authorizations*, WT Docket No. 07-237, Memorandum Opinion and Order, FCC 08-46 (rel. Feb. 8, 2008).

<sup>34</sup> For example, this percentage is far higher than the combined market shares of the top two banking institutions (21%), the top two airlines (32%) or the top two automobile manufacturers (35.6%), all of which are considered “consolidated” industries. *See* Fed. Deposit Ins. Corp., Summary of Deposits, Summary Tables: Asset Size (Oct. 1, 2012); Fed. Deposit Ins. Corp., Summary of Deposits, Summary Tables: Top 50 Commercial Banks and Savings Institutions by Deposits (Oct. 1, 2012) (*both available at* <http://www2.fdic.gov/sod/sodSummary.asp?barItem=3>); Bureau of Transportation Statistics, Research and Innovation Technology Administration, Airline Domestic Market Share April 2012 – March 2013, available at <http://www.transtats.bts.gov/>; Auto Sales – Market Data Center - WSJ.com, [http://wap.wsj.com/mdc/public/page/2\\_3022-autosales.html#autosalesE](http://wap.wsj.com/mdc/public/page/2_3022-autosales.html#autosalesE) (last visited July 23, 2013).

significant urban areas across the country.<sup>35</sup> If approved, Leap's five million subscribers, along with its valuable PCS and AWS spectrum covering 137 million POPs, will be placed under AT&T's control, adding to its stockpile of spectrum and customers.<sup>36</sup>

### **III. THE COMMISSION SHOULD PROMPTLY COMPLETE ITS MOBILE SPECTRUM HOLDINGS PROCEEDING**

To combat the effects of this industry consolidation, the Commission must evaluate and update its obsolete mobile spectrum holdings analysis procedures. The result of increased industry concentration is a markedly different competitive landscape than the one that existed a decade ago. As the wireless industry continues to grow increasingly concentrated, it has become evident that the current system for analyzing spectrum holdings is not aligned with the competitive realities of today's wireless industry. Under the current rules, the Twin Bells continue to acquire spectrum through individual transactions such as the one at issue in this proceeding. To combat this rapid and alarming market consolidation, the Commission should prioritize its rulemaking proceeding regarding its mobile spectrum holdings policies. Without promptly concluding that rulemaking, the wireless industry will continue on its path of consolidation, particularly with fewer regional and rural carrier partners. If a coordinated approach to spectrum aggregation is the Commission's ultimate goal, it should take immediate action on that proceeding.

---

<sup>35</sup> Leap, although not a nationwide carrier, owns valuable spectrum licenses in significant areas, including but not limited to the mid-Atlantic seaboard from Philadelphia down to Richmond, VA as well as PCS, AWS and 700 MHz licenses in cities such as San Antonio, Houston, Denver, Kansas City, San Diego, Phoenix and Portland, Oregon. Leap also owns licenses in dense cities like Chicago, Pittsburgh, Memphis, Nashville, Greenville, South Carolina, Baton Rouge, Oklahoma City and Salt Lake City. *See AT&T-Leap Public Interest Statement.*

<sup>36</sup> *Public Notice 2.*

CCA has previously recommended that the Commission strengthen its spectrum screen by replacing its current “single-trigger” approach with the following three separate thresholds for identifying competitive harms in the current wireless landscape:<sup>37</sup> (1) a new threshold for spectrum below 1 GHz in local markets of one-quarter of the useable spectrum in a given market;<sup>38</sup> (2) the current one-third threshold for evaluating an entity’s aggregated spectrum holdings (including holdings both below 1 GHz and above 1 GHz in each local market);<sup>39</sup> and (3) a new national threshold set “somewhat below the level that would correspond to one-third of the spectrum deemed ‘suitable and available’ for mobile broadband.”<sup>40</sup>

CCA’s recommendations better reflect today’s competitive realities. Without a spectrum screen that accounts for the unique competitive challenges facing today’s consolidating industry, competitive carriers will continue to be acquired by the Twin Bells through individual secondary market transactions. This trend will only continue until the Commission reviews its spectrum aggregation policies and develops an improved spectrum screen based on the areas CCA has highlighted.

The Commission has developed an extensive record over the past year on mobile spectrum holdings spurred by its September 2012 *Notice of Proposed Rulemaking*.<sup>41</sup> Not only does the Commission have the information it needs, but the timing is also ideal for a major overhaul of the spectrum screen. The Commission is on the brink of making significant amounts

---

<sup>37</sup> Comments of CCA in *Policies Regarding Mobile Spectrum Holdings*, WT Docket No. 12-269 (filed Nov. 28, 2012) (“*CCA Mobile Spectrum Holdings Comments*”). CCA also recommended that the Commission establish a rebuttable presumption that the transactions exceeding the screen thresholds are contrary to the public interest. *Id.* at 16-18.

<sup>38</sup> *Id.* at 11-12.

<sup>39</sup> *Id.* at 12.

<sup>40</sup> *Id.* at 13.

<sup>41</sup> See *Policies Regarding Mobile Spectrum Holdings NPRM*.

of spectrum available for mobile wireless use in the near future through several upcoming auctions.<sup>42</sup> Before these auctions commence, and procedures are developed, the Commission must focus on clarifying its approach to evaluating spectrum aggregation in the wireless industry. Doing so now will allow for increased clarity and consistency in the upcoming auctions. Therefore, CCA urges the Commission to complete the mobile spectrum holdings proceeding immediately.

#### **IV. THE COMMISSION MUST IMPOSE TRANSACTION-SPECIFIC CONDITIONS TO PROMOTE COMPETITION AND THE PUBLIC INTEREST**

The Commission has previously recognized its broad authority under Section 303(r) of the Communications Act to “impose[] conditions to remedy specific harms likely to arise from the transaction.”<sup>43</sup> The Commission should impose the following appropriate, transaction-specific conditions to further protect competition, mitigate anti-competitive harms, and promote the public interest.<sup>44</sup>

---

<sup>42</sup> For instance, the H Block Auction is scheduled for January 14, 2014, the AWS-3 Band auctions may start as early as September 2014 (with a statutory deadline of February 2015), and the incentive auction is also on the horizon. In addition, the Commission is required to identify 15 MHz of contiguous spectrum by February 2015. *See e.g., Auction of H Block Licenses in the 1915-1920 MHz and 1995-2000 MHz Bands Scheduled for January 14, 2014*, Public Notice, DA 13-1885 (rel. Sept. 14, 2013); Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, 126 Stat. 156, §§ 6401, 6403 (Feb. 22, 2012) (setting statutory deadlines for making available the H Block, The AWS-3 Band, spectrum from the Incentive Auction and 15 MHz of contiguous spectrum); Letter from Lawrence Strickling, Assistant Secretary, NTIA, to Julius Genachowski, Chairman, FCC (April 19, 2013) (regarding the planned auctions of licenses in the 1695-1710 MHz Band and the 1755-1780 MHz band).

<sup>43</sup> *AT&T/Qualcomm Order*, ¶ 26; *see also* 47 U.S.C. 303(r).

<sup>44</sup> *N.b.*, while interoperability remains an important policy consideration and competitive carrier need, CCA is confident that the Commission will implement the various commitments made by stakeholders in the interoperability docket (WT Docket No. 12-69) well in advance of a decision on this transaction.

**A. Spectrum Divestitures Are Appropriate Where AT&T Exceeds the Spectrum Threshold**

CCA urges the Commission to conduct a full review of AT&T's spectrum use in each market across the nation and, in counties where, in the aggregate, AT&T exceeds the spectrum screen as proposed by CCA above, the Commission should require AT&T to divest spectrum comparable to that which it is acquiring. AT&T has already recognized that this transaction will trigger the current spectrum screen. Specifically, AT&T points out that 38 CMAs will exceed the current spectrum screen.<sup>45</sup> At the very least, the FCC must require divestitures to existing operating carriers that are seeking to enhance their current offerings or expand their current operations in markets where it is clear that AT&T's aggregate spectrum inventory unreasonably exceeds the capacity necessary to meet near-term demand. This should particularly be the case in rural markets, where AT&T does not need significant spectrum to serve sparsely-populated areas.

**B. AT&T Must Continue To Provide Voice and Data Roaming Arrangements At Least As Favorable As Those Provided To Its Fellow Applicants' Competitors**

Despite the *Data Roaming Order's* mandate, many of CCA's members are still not able to receive "commercially reasonable" data roaming arrangements<sup>46</sup> from AT&T and Verizon. The Commission has stated that the adoption of the roaming rules "does not . . . obviate the need to consider whether there is any potential roaming-related harm that might arise" from a transaction.<sup>47</sup> And, it was with this recognition that the Commission has noted its willingness to "carefully consider whether to impose a roaming condition" on the AT&T/Qualcomm transaction, due to its nationwide competitive

---

<sup>45</sup> Indeed, more CMAs would likely be triggered if the Commission uses CCA's revised spectrum screen.

<sup>46</sup> *Data Roaming Order* ¶ 13.

<sup>47</sup> *AT&T/Qualcomm Order* ¶ 57.

impact.<sup>48</sup> Most recently, the Commission conditioned its approval of AT&T's acquisition of Atlantic Tele-Network's Allied Wireless Communications Corporation ("Alltel") properties on AT&T's continued offering of certain roaming services.<sup>49</sup>

With the loss of Leap, many competitive carriers will lose a valuable roaming partner and a champion of reasonable voice and data roaming. The loss of Leap as a roaming partner is particularly damaging for competitive carriers because Leap, as a regional carrier itself, has a strong incentive to enter into reasonable, reciprocal voice and data roaming arrangements with other regional carriers to fill gaps in its own coverage area.<sup>50</sup> Leap has also expressed interest in continuing partnerships to deliver 4G LTE services.<sup>51</sup> On the other hand, AT&T, as a nationwide carrier, lacks a similar incentive. Indeed, AT&T has been notorious for not entering into roaming agreements at commercially reasonable terms and conditions, particularly for 4G LTE services.

To mitigate the competitive harms caused by the loss of Leap as an important roaming partner, the Commission should require that AT&T commit to offer 3G and 4G LTE roaming services under the same terms and conditions negotiated by competitors with Leap. Specifically, as Verizon committed to in the Verizon/ALLTEL transaction, the Commission should require AT&T to offer "each regional

---

<sup>48</sup> *Id.* at ¶ 56.

<sup>49</sup> *AT&T/Alltel Order* ¶¶ 95-96. Specifically, the Commission found it to be in the public interest that AT&T commit to offering CDMA voice and data roaming services over Alltel's 3G EV-DO network under the prices, terms and conditions of agreements assumed from Alltel for a period of at least 18 months subsequent to the closing of the transaction. *Id.* at ¶ 96.

<sup>50</sup> Nationwide Wireless | Prepaid Wireless Plans | Leap Wireless, <http://www.leapwireless.com/brands/nationwide-wireless> (last visited Sept. 25, 2013) (noting that "[Leap] start[s] with [its] own facilities-based networks in Cricket markets across the country, covering approximately 95 million potential customers. [It] [t]hen [] expand[s] [its] reach through wholesale and roaming agreements with several wireless providers. The result is nationwide coverage spanning approximately 290 million potential customers."

<sup>51</sup> *Id.* (stating that "as we roll out LTE we continue to explore cost-effective ways to deliver 4G services, including deploying our own facilities-based networks and entering into partnerships and joint ventures with other carriers.").

small and/or rural carrier that has a roaming agreement with [one of the acquired entities] the option to keep the rates set forth in that roaming agreement in force for the full term of the agreement, notwithstanding any change of control or termination for convenience provisions that would give [AT&T] the right to accelerate the termination of such agreement.”<sup>52</sup> In addition, in this instance, AT&T should be forced to offer such terms to carriers for 4G LTE services even if its agreements with such carriers are only for 3G services. It is common knowledge that 4G LTE services are more efficient and cost-effective than 3G wireless services, so such a commitment is actually less costly for AT&T to abide by than a roaming obligation that simply encompasses 3G services. In addition, AT&T should be barred from claiming that it will not honor Leap’s existing roaming agreements because of any plans AT&T may have to re-farm Leap’s spectrum.<sup>53</sup> Leap noted that it “kept spectrum unused so that we have a clear path to 4G,” providing AT&T with additional leeway to offer reasonable roaming while moving forward with re-farming plans. Doing so is an AT&T business decision, and Leap’s current roaming partners – and the consumers who receive services from these partners – should not be made to suffer for AT&T’s gain. Although the loss of a roaming partner is eventually irreparable, such a condition would help mitigate, in the near term, the competitive harm of losing yet another roaming partner.

---

<sup>52</sup> *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act*, WT Docket No. 08-95, Memorandum Opinion and Order and Declaratory Ruling, 24 FCC Rcd 17444, 17524 ¶ 178.

<sup>53</sup> Indeed, AT&T has previously voluntarily committed to operating and maintaining a CDMA network for a defined period of time in order to allow other providers to continue roaming on the merged entity’s network while the transition to GSM was completed. *See e.g., Applications of AT&T Inc. and Centennial Communications Corp. For Consent to Transfer Control of licenses, Authorizations, and Spectrum Leasing Arrangements*, WT Docket No. 08-246, Memorandum Opinion and Order, FCC 09-97, ¶¶ 136-138 (rel. Nov. 5, 2009).

## CONCLUSION

For the foregoing reasons, the Commission should promptly resolve its mobile spectrum holdings proceeding to combat industry consolidation and condition any order approving the above-captioned transaction on spectrum divestitures and roaming commitments from AT&T.

Respectfully Submitted,

/s/ Rebecca Murphy Thompson

Steven K. Berry  
Rebecca Murphy Thompson  
C. Sean Spivey  
Competitive Carriers Association  
805 15th Street, NW  
Suite 401  
Washington, DC 20005

September 27, 2013

## CERTIFICATE OF SERVICE

I, C. Sean Spivey, hereby certify that on the 27th day of September, 2013, I caused a true and correct copy of the foregoing Petition to Condition to be sent by electronic mail to:

<p>John O'Connor*  SVP &amp; Assistant General Counsel  AT&amp;T, Inc.  208 South Akard Street, Room 3301  Dallas, TX 75202  <a href="mailto:joconnor@att.com">joconnor@att.com</a></p>	<p>James H. Barker, Esq.*  Latham &amp; Watkins LLP  555 Eleventh Street, NW Suite 1000  Washington, DC 20004  <a href="mailto:james.barker@lw.com">james.barker@lw.com</a>  <i>Counsel for Cricket License Company, LLC,  Leap Wireless International, Inc., Leap  Licenseco Inc.</i></p>
<p>Robert J. Irving Jr.*  Cricket License Company, LLC  5887 Copley Drive  San Diego, CA 92111  <a href="mailto:rirving@cricketcommunications.com">rirving@cricketcommunications.com</a></p>	<p>Linda Ray  Broadband Division  Wireless Telecommunications Bureau  Federal Communications Commission  <a href="mailto:linda.ray@fcc.gov">linda.ray@fcc.gov</a></p>
<p>Kathy Harris  Mobility Division  Wireless Telecommunications Bureau  Federal Communications Commission  <a href="mailto:kathy.harris@fcc.gov">kathy.harris@fcc.gov</a></p>	<p>John Schauble  Broadband Division  Wireless Telecommunications Bureau  Federal Communications Commission  <a href="mailto:john.schauble@fcc.gov">john.schauble@fcc.gov</a></p>
<p>David Krech  Policy Division  International Bureau  Federal Communications Commission  <a href="mailto:david.krech@fcc.gov">david.krech@fcc.gov</a></p>	<p>Kate Matraves  Spectrum and Competition Policy Division  Wireless Telecommunications Bureau  Federal Communications Commission  <a href="mailto:catherine.matraves@fcc.gov">catherine.matraves@fcc.gov</a></p>
<p>Jim Bird  Office of General Counsel  Federal Communications Commission  <a href="mailto:TransactionTeam@fcc.gov">TransactionTeam@fcc.gov</a></p>	<p>Best Copy and Printing, Inc.  <a href="mailto:fcc@bcpiweb.com">fcc@bcpiweb.com</a></p>

/s/ C. Sean Spivey  
C. Sean Spivey

\* To receive one copy of the Filing via First-class mail, pursuant to 47 C.F.R. § 1.47.