

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Applications of Cricket License Company, LLC, <i>et al.</i> , Leap Wireless International, Inc., and AT&T Inc. for Consent to Transfer Control of Authorizations	)	WT Docket No. 13-193
	)	
Application of Cricket License Company, LLC and Leap Licenseco Inc. for Consent to Assignment of Authorization	)	

To: The Commission

**REPLY COMMENTS OF THE RURAL WIRELESS ASSOCIATION, INC.**

The Rural Wireless Association, Inc. (“RWA”), by its attorneys, hereby submits these Reply Comments to the Joint Opposition of AT&T, Inc. (“AT&T”) and Leap Wireless International, Inc. (“Leap”) (collectively, “Opponents”) to Petitions to Deny and Condition and Reply to Comments (“Joint Opposition”) filed on October 23, 2013.

**I. Eliminating Leap from the Commercial Mobile Wireless Marketplace will Harm Competition**

AT&T and Leap continue to argue that AT&T’s acquisition of Leap will not harm competition. In RWA’s Comments filed in this proceeding, RWA pointed out the numerous public interest harms that will result from allowing AT&T to proceed with the acquisition of Leap. RWA has shown how allowing a single carrier to hold more than 25 percent of the suitable and available commercial mobile radio service spectrum in any given county poses substantial public interest harms, and both the Commission and the U.S. Department of Justice (“DOJ”) have recognized the competitive harms that stem from spectrum concentration that

results in less than four nationwide carriers. For example, such spectrum concentration further entrenches the carriers with the largest spectrum holdings (i.e., AT&T and Verizon Wireless) and makes it difficult, if not impossible, for other carriers to develop a footprint sufficiently large enough to allow them to compete. In addition, it eliminates competitive pressure on the Twin Bells to maintain commercially reasonable roaming rates and denies consumers the benefits of competitive pricing. These competitive harms result from spectrum concentration that leaves a market with fewer than four carriers, regardless of their size.

The only way to ensure that at least four carriers can adequately compete in a market is to ensure that no single carrier holds more than 25 percent of all suitable and available spectrum in that market. If AT&T is allowed to acquire Leap's spectrum, AT&T will exceed 25 percent of all suitable and available spectrum in 70% of the counties included in this transaction.

Accordingly, the competitive harms described by RWA, the FCC and DOJ *will* occur if the proposed transaction is allowed to go through. These harms outweigh any minimal public interest benefits such as operational efficiencies that may result from approval of the transaction.

Opponents argue that "in each area involved in this transaction, all four national carriers hold spectrum" but they do not indicate how much spectrum these carriers hold. It is the *amount* of spectrum that each holds that allows competition to flourish. The fact that four national carriers hold spectrum in a market is meaningless if each does not hold sufficient spectrum to allow it to exert competitive pressure on the other national carrier in the market.

The competitive concerns that result from excessive spectrum aggregation are well documented both in this proceeding and in the FCC's pending spectrum aggregation proceeding (WT Docket No. 12-269). Until the Commission concludes that proceeding, it should review the

instant transaction in a manner that ensures the existences of at least four separate carriers with sufficient spectrum in every affected county, or hold this proceeding in abeyance pending the outcome of the aggregation proceeding.

**II. Conditioning Approval on Commercially Reasonable Roaming Rates is Entirely Consistent with Existing Law**

Opponents oppose RWA's request that the Commission, if it chooses to approve the proposed transaction, condition approval on AT&T's willingness to offer, in those markets where AT&T (after acquiring leap) will hold 25 percent or more of the suitable and available spectrum, data roaming to any requesting carrier at commercially reasonable rates, arguing that RWA's concern about roaming rates is not transaction-specific. The FCC's Rules *already require* AT&T to offer data roaming to any requesting carrier at commercially reasonable rates, 47 C.F.R. §20.12(e). Accordingly, Opponents are objecting to a condition that would require them to comply with a requirement *to which they are already subject*. RWA can only assume this objection is based on AT&T's intent to continue to ignore the law. The FCC should not countenance such a blatant attempt by AT&T to evade its regulatory obligations.

**III. Conditions are Necessary Now. Delaying Imposition of the Requested Conditions Harms Competition**

In its Comments, RWA requested that if the Commission chooses to review the proposed transaction prior to the conclusion of its spectrum aggregation proceeding, then the Commission should either require certain divestitures or, if the Commission chooses to permit AT&T to hold greater than 25 percent of all suitable and available spectrum in a given market, require AT&T to support commercially reasonable roaming rates with requesting roaming partners on par with the rates it charges companies that resell its services (*i.e.*, MVNO rates) or alternatively, no more than it charges its own retail customers, sell fully interoperable mobile devices, and take the

necessary steps to ensure that consumers are free to unlock any mobile device they purchase and use it on any wireless carrier's network. Opponents argue that the conditions requested by RWA are not transaction-specific, and therefore should not be adopted. Contrary to Opponents' belief, each of these conditions is aimed at a transaction-specific harm. The conditions all seek to address the competitive harms that RWA has illustrated will occur in any market where a single carrier holds more than 25 percent of suitable and available spectrum. Willfully ignoring competitive harms until such time as a pending rulemaking proceeding is completed will not serve the public interest. However, should the Commission decide not to require the requested divestitures or impose the requested conditions at this time, it should at a minimum hold this proceeding in abeyance, pending completion of the spectrum aggregation proceeding. AT&T was well aware when it entered into the proposed transaction that the Commission is giving serious consideration to limiting the amount of spectrum that can be held by individual entities. Given the inherent uncertainty as to whether AT&T would be able to acquire additional spectrum in certain markets, it should not come as a surprise nor unduly harm AT&T or Leap if the Commission delays acting in this proceeding until the precise nature of the FCC's anticipated spectrum holding limitations has been determined.

Respectfully submitted,

**RURAL WIRELESS ASSOCIATION, INC.**

By: */s/ Caressa D. Bennet*

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