



Public Knowledge

March 11, 2014

Marlene H. Dortch
Secretary, Federal Communications Commission
445 12th St SW
Washington, DC 20554

Re: Applications of Cricket License Company, LLC, *et al.*, Leap Wireless, Inc., and AT&T Inc for Consent to Transfer Control of Authorizations, WT 13-193; Revision of Part 15 of the Commission's Rules to Permit Unlicensed National Information Infrastructure (U-NII) Devices in the 5 GHz Band, ET Docket No. 13-49; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, Docket No. 12-268; Policies Regarding Mobile Spectrum Holdings, WT Docket No. 12-269

Dear Ms. Dortch:

Yesterday, John Bergmayer and Harold Feld of Public Knowledge (PK) met with Brendan Carr of Commissioner Pai's office to discuss various wireless topics.

On the AT&T/Leap transaction, PK reiterated its primary concerns; namely, those relating to spectrum consolidation, and to Leap's unique contribution to the marketplace in terms of its price plans and the markets it serves. On balance, PK continues to believe that the transaction should be blocked for the reasons laid out in PK's initial filings, and that it would be better for the Commission to finalize its work on spectrum aggregation before processing new transactions. But because it appears that the Commission is moving forward on this transaction, PK explained that because AT&T is already a dominant holder of spectrum, it should not be permitted to exceed the spectrum screen in any market, and that if the Commission elects to allow the transaction to go through that any divestitures it orders should enhance competitiveness--in other words, spectrum divestitures should not merely be a means for AT&T and Verizon to rationalize their holdings. Additionally, if the Commission allows this transaction to go forward, it should adopt conditions designed to ensure that AT&T does not eliminate consumer choice and limit the services available through Leap. As PK argued in its petition to deny, this means that at a minimum the FCC should require AT&T to (1) Continue offering the same prepaid service as Leap, with the same rates, terms and conditions, for a minimum of four years for existing Leap customers and two years for new prepaid customers; (2) allow existing Leap customers, for a minimum of four years, to upgrade their plans or devices without losing the terms and conditions currently available to them; (3) not throttle its prepaid customers when they using their guaranteed "Full-Speed Data"; and (4) make the same handsets available to its prepaid customers that it does to its postpaid customers.

In the 5 GHz proceeding, PK is encouraged that the Commission appears headed to a good policy outcome. It cautioned, however, that the Commission should be skeptical of filings

by Globalstar that clearly exaggerate potential interference issues in ways that seem calculated to gain leverage in other, unrelated proceedings.¹

As to the incentive auction, PK shares the joint position of many companies and public interest groups that the Commission should put a cap on the total amount of sub-1 GHz spectrum any one carrier can control, and structure the auction in a way that promotes competition rather than allows dominant carriers to further cement their control of the market. PK discussed why, because of the “incumbent discount” which enables larger carriers to deploy new spectrum more cheaply and thus bid up licenses,² and because of “foreclosure value” effects,³ without Commission intervention designed to promote competition it is likely that dominant carriers would prevail in most auctions, to the detriment of wireless consumers. PK underscored the importance of protecting white spaces in this proceeding, arguing that the Commission should secure at least 24 MHz of white space, which needs to be contiguous, and further pointing out that the Commission has several ways to accomplish this goal, for example, through channel-sharing and by leveraging guard bands.

Respectfully submitted,

/s John Bergmayer
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Public Knowledge

¹ See Harold Feld, *Globalstar’s Stellar Chutzpah: Trying To Hold Up New Free WiFi To Leverage ‘Licensed WiFi,’* Dec. 30, <http://www.wetmachine.com/tales-of-the-sausage-factory/globalstars-stellar-chutzpah-trying-to-hold-up-new-free-wifi-to-leverage-licensed-wifi>.

² See Harold Feld, “Spectrum Auction Theory v. Competition Theory,” February 15, 2012 available at <http://www.wetmachine.com/tales-of-the-sausage-factory/spectrum-auction-theory-v-competition-theory/>

³ See Harold Feld, “Is Fear of Wireless Foreclosure Speculative?” April 22, 2013 <http://www.wetmachine.com/tales-of-the-sausage-factory/is-fear-of-wireless-foreclosure-speculative-depends-is-this-about-intent-or-effect/>