

**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)	

REPLY TO JOINT OPPOSITION TO CCA'S PETITION TO CONDITION

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Competitive Carriers Association (“CCA”) hereby respectfully replies to AT&T and Leap Wireless International’s Joint Opposition (the “Joint Opposition”)¹ to CCA’s Petition (the “CCA Petition”) to adopt safeguards to remedy the anti-competitive harms associated with the proposed license transfers (the “Transaction”) by and 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”) before the Federal Communications Commission (the “FCC” or “Commission”).²

¹ Joint Opposition of AT&T Inc. and Leap Wireless International, Inc. To Petitions to Deny and Condition and Reply to Comments, in WT Docket No. 13-193 (filed Oct. 23, 2013) (“*Joint Opposition*”).

² *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*”).

I. INTRODUCTION AND SUMMARY

Despite the Applicants' attempt to demonstrate otherwise, the Transaction, as proposed, would result in AT&T's acquisition of scarce spectrum resources and the elimination of both a nationwide³ wireless service provider to consumers and a roaming partner on which other wireless carriers rely.⁴ Both of these results will benefit AT&T as it continues to increase its market power through ever-larger spectrum holdings and consolidation of the market.

Additionally, the competitive checks that Leap's separate existence creates will be lost if this Transaction is approved as proposed. For instance, AT&T has already announced plans to shutter its Aio Wireless ("Aio") prepaid band if the Transaction is approved,⁵ even after touting the benefits of targeting the prepaid wireless market with Aio.⁶ The Joint Opposition attempts to minimize Aio's role as a competitor to Leap, despite the fact that Leap provided the spark that ignited Aio's creation. Although the Joint Opposition explains that AT&T will still offer prepaid

³ The Joint Opposition coincidentally deemphasizes the fact that Leap offers wireless service on a national basis. *See Joint Opposition*, 19.

⁴ Although the Joint Opposition now attempts to portray Leap as a carrier whose "competitive significance has only declined" (*Joint Opposition*, 19), Leap is still relevant in the wireless industry for the reasons discussed herein. However, to the extent Leap's competitive presence has declined, it is certainly due in part to the anti-competitive actions that AT&T and Verizon have undertaken in the past few years. In order to ensure that other regional and smaller carriers' "competitive significance" is adequately protected, the Commission needs to take actions that promote competition, rather than actions that result in the elimination of competition.

⁵ *See Joint Opposition*, 31-32; *see also* Mike Dano, *AT&T to Shutter Aio Wireless Prepaid Brand if Leap Acquisition is Successful*, FIERCEWIRELESS, Oct. 18, 2013, <http://www.fiercewireless.com/story/att-shutter-aio-wireless-prepaid-brand-if-leap-acquisition-successful/2013-10-18>;

⁶ *See* Press Release, AT&T, *Aio Wireless Announces new Nationwide Voice and Data Service*, May 9, 2013, <http://www.att.com/gen/press-room?pid=24185&cdvn=news&newsarticleid=36421&mapcode=> (promising that Aio is "set up to win over value-conscious customers who are increasingly moving towards smartphones and mobile broadband.").

services, the Transaction still *clearly* eliminates a competitor, the result of which will diminish innovation, eliminate options for consumers and likely raise prices for customers.

The United States Department of Justice has highlighted the competitive harms resulting from the loss of a potential entrant due to a merger. The *DOJ Horizontal Merger Guidelines* find that:

The lessening of competition resulting from [a merger between an incumbent and potential entrant] is more likely to be substantial, the larger is the market share of the incumbent, the greater is the competitive significance of the potential entrant, and the greater is the competitive threat posed by this potential entrant relative to others.⁷

By acquiring Leap, AT&T not only gets to take an independent competitor out of the marketplace, but at the same time can close down its Aio brand, which—in its words—was “created to fit an unmet need in the marketplace” and is trying to “differentiate itself from all other prepaid wireless competitors *by attacking the market from all sides.*”⁸ AT&T is understandably excited about its potential “one-two punch.”⁹

A second consequence, which may not be as obvious but is equally detrimental to consumers if AT&T is permitted to acquire Leap, will be the loss of an important roaming partner in the wireless marketplace. Although roaming negotiations and agreements occur

⁷ DEPARTMENT OF JUSTICE & FEDERAL TRADE COMMISSION, HORIZONTAL MERGER GUIDELINES, § 5.3 (Aug. 19, 2010) *available at*: <http://www.justice.gov/atr/public/guidelines/hmg-2010.html> (“*DOJ Horizontal Merger Guidelines*”).

⁸ Molly Ryan, *AT&T Goes Big with Aio Investment in Houston*, Houston Business Journal BizBlog, May 22, 2013, <http://www.bizjournal.com/Houston/blog/nuts-and-bolts/2013/05/att-goes-big-with-aio-investment-in.html> (emphasis added).

⁹ See Seeking Alpha Transcript, AT&T’s Management Discusses Q3 2013 Results - Earnings Call Transcript at 3, Jan. 24, 2013, <http://seekingalpha.com/article/1766162-at-ts-management-discusses-q3-2013-results-earnings-call-transcript> (“While we are positive on smartphone net adds, we are seeing some pressure with our more price-sensitive subscribers on low-end 2G feature phones. We continue to be excited about our pending acquisition of Leap Wireless that allow us to better compete in the prepaid space and we are continuing to move forward to an expected first quarter 2014 close.”).

“behind the scenes” to consumers, the ability or inability of a wireless provider to procure commercially reasonable roaming terms and conditions has a direct impact on consumer pricing. Leap has been a champion of roaming due in large part to its willingness to enter into commercially reasonable roaming agreements – including 4G LTE roaming agreements.

The cooperation exemplified by Leap and its adherence to the Commission’s data roaming regulations¹⁰ directly impacts the prices that customers pay to their home wireless carriers while roaming. AT&T, on the other hand, is notorious for its lack of participation or even negotiating when it comes to roaming.¹¹ If AT&T is permitted to acquire Leap, an important and commercially reasonable roaming partner will be replaced by an uncooperative market duopolist, exacerbating the roaming challenges for competitive carriers.

In an effort to gain quick Commission approval, the Joint Opposition attempts to compare the Transaction to the recent T-Mobile/MetroPCS merger by anticipating that the AT&T/Leap merged entity will also “further intensify[] competition overall and provid[e] consumers even greater benefits.”¹² This is a misleading comparison. The T-Mobile/MetroPCS was a combination of two smaller, competitive mavericks, neither of which display an interest in

¹⁰ Indeed, Leap fought vigorously for data roaming rights for years at the Commission, and helped to successfully defend the Commission’s authority to adopt the data roaming rules when Verizon challenged those rules at the D.C. Circuit. See, e.g., Comments of Leap Wireless International, Inc. and Cricket Communications, Inc. in *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265 (filed June 14, 2010); Reply Comments of Leap Wireless International, Inc. and Cricket Communications, Inc. in *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265 (filed July 12, 2010); Joint Brief for Intervenors in Support of the Fed. Comm’n’s Comm’n., *Cellco P’ship v. FCC*, No. 11-1135 (D.C. Cir. Jan. 23, 2013).

¹¹ See, e.g., *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, ¶ 12 (2011) (“*Data Roaming Order*”) (noting that “only AT&T and Verizon Wireless oppose the Commission’s adoption of a data roaming requirement.”).

¹² *Joint Opposition*, 5.

turning the wireless industry into a duopoly. In addition, both T-Mobile and MetroPCS were and are active participants in the roaming market. The T-Mobile/MetroPCS merger allowed T-Mobile to obtain much needed spectrum to compete against Verizon and AT&T.¹³

With the Transaction, AT&T, a carrier that has been described as the “Pac Man of telecom”,¹⁴ is merely gobbling up yet another (soon to be) ghost – the sixth largest facilities-based carrier, Leap. And unlike the T-Mobile/MetroPCS combination, Leap is being acquired by a staunch opponent of efforts to promote commercially reasonable data roaming. It is improper for the Applicants to compare these two transactions when the applicants of each transaction are in different positions with vastly different interests.

Instead, the Transaction is yet another maneuver by AT&T in its attempt to reduce competition and further consolidate its market power. Over the past decade, AT&T has consistently strengthened its dominance in the wireless market¹⁵ through spectrum aggregation

¹³ See, e.g., Matt Egan, *Catching Up? T-Mobile Scores 1.1M New Customers in 2Q*, Fox Business News, Aug. 8, 2013, <http://www.foxbusiness.com/industires/2013/08/t-mobile-subscriber-growth-tops-views/> (noting that, in the quarter following its acquisition of MetroPCS T-Mobile added 1.1 million net subscribers, and revenue “soared 27.5%.”).

¹⁴ Karl Bode, *AT&T Continues Acquisition Spree With Long Lines*, BROADBAND DSL REPORTS (July 29, 2013) <http://www.dslreports.com/shownews/ATT-Continues-Acquisition-Spree-With-Long-Lines-125154> (characterizing AT&T “as the Pac Man of telecom [that] continues gobbling up everything in sight” with regards to its recent spectrum acquisition activities).

¹⁵ Although the Joint Opposition incredibly implies that AT&T does not hold any “dominant spectrum position,” (*Joint Opposition*, 16) a few short months prior to the announcement of the Transaction, AT&T claimed it was in a “satisfactory spectrum position for the next five years.” See Karl Bode, *AT&T CFO: We Have Enough Spectrum But Would Like More, Please*, BROADBAND DSL REPORTS (Feb. 28, 2013) <http://www.dslreports.com/shownews/ATT-CFO-We-Have-Enough-Spectrum-But-Would-Like-More-Please-123337>. In addition, the Commission’s *Sixteenth Wireless Competition Report* also concluded that specifically, with respect to the sub-1 GHz spectrum, AT&T and Verizon hold the majority of available Cellular and 700 MHz spectrum – the spectrum that is most favorable for wireless service, particularly in rural areas. *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, ¶ 129 (rel. Mar. 21, 2013) (“*Sixteenth Wireless Competition Report*”). The

(continued...)

both on the secondary market and at auction, making it difficult for smaller or regional carriers to acquire the resources that they need to effectively compete.¹⁶ As a result, these smaller carriers are often easy targets for acquisitions by AT&T and Verizon.¹⁷ The rapid industry consolidation and increased concentration is alarming because AT&T and Verizon's domination of "[m]arket power can lead directly to consumers paying higher prices, can insulate a carrier from the competitive pressures to expand service or improve quality, and can diminish innovation."¹⁸ This may very well be the future of the wireless industry if steps are not taken to prevent the impending duopoly.

With its review of the Transaction, the Commission has an opportunity to take necessary steps to remedy transaction-specific, anti-competitive harms and promote a more competitive market. To do so, CCA first recommends that the Commission condition this Transaction on two things: (1) a requirement that AT&T divest spectrum in areas where AT&T exceeds the spectrum screen used to evaluate the Transaction; and (2) a requirement that AT&T honor existing Leap roaming agreements. The Commission has imposed similar conditions in previous spectrum acquisition transactions and should do so here. These conditions will help to ensure

(...continued)

Report also concluded that Verizon and AT&T "each hold significant amounts of 700 MHz, Cellular, broadband PCS and AWS Spectrum." *Id.* at ¶ 117.

¹⁶ The intellectual voracity of the Joint Opposition can be judged by its throwing of the immaterial brickbat that CCA's members "collectively hold several times as much spectrum as AT&T." *Joint Opposition*, 16. This argument is without merit as it incorrectly compares a single carrier's – AT&T's – own amount of spectrum holdings to the *combined* spectrum holdings of *over 100 competitive carriers*.

¹⁷ As CCA previously recognized, numerous small or regional carriers have been forced to exit the market over the past decade, including Dobson, ALLTEL, Centennial, Rural Cellular Corporation, Aloha Wireless, Edge Wireless, Cal North Wireless, Mohave Wireless, SureWest Wireless. CCA, Petition to Condition, WT Docket No. 13-193, 10 (filed Sept. 27, 2013) ("*CCA Petition*").

¹⁸ Ex Parte Submission of the U.S. Dep't of Justice, WT Docket No. 12-269, 7 (filed Apr. 11, 2013) ("*DOJ Ex Parte Submission*").

that small and regional carriers have fair access to spectrum on the secondary market and are provided a fair opportunity to procure commercially reasonable roaming agreements.

Furthermore, the Commission should prioritize completing its comprehensive review of its rules regarding mobile spectrum holdings. The wireless market has changed drastically since the Commission's last comprehensive review of its spectrum aggregation policies, and most of the available spectrum has fallen into the hands of Verizon and AT&T at the expense of the smaller and regional carriers. If the Commission does not act expeditiously in this proceeding, CCA is concerned that any efforts to fix the broken screen may be futile by the time any revised regulations are adopted. CCA strongly recommends that the Commission act quickly to adopt a new spectrum screen – one that takes into consideration the different propagation characteristics of different bands of spectrum.

II. THE COMMISSION SHOULD REQUIRE SPECTRUM DIVESTITURES AND IMPOSE ROAMING CONDITIONS TO PROMOTE COMPETITION AND THE PUBLIC INTEREST

CCA requests that the Commission impose appropriate conditions on AT&T to mitigate the anti-competitive harms caused by the Transaction in its current form. Specifically, the Commission should require AT&T to divest spectrum in markets where it exceeds the spectrum screen, and the Commission should also impose conditions that require AT&T to provide voice and data roaming arrangements at least as favorable as those provided by Leap to its roaming partners.

A. Spectrum Divestitures Should Be Required Where AT&T Exceeds the Spectrum Threshold

The Commission has long recognized that “[c]ompetition is the lifeblood of [the] free market economy.”¹⁹ However, the future of competition is currently being threatened in the wireless industry. This acquisition exceeds the thresholds of the current spectrum screen in 38 CMAs – a fact already acknowledged by AT&T.²⁰ The Applicants nonchalantly downplay the 38 CMAs²¹ that will be triggered under the screen, noting that “only” *seven million people* are covered by these CMAs and will be affected by AT&T’s anti-competitive actions.²² But the Commission should not fall for AT&T’s cavalier attitude towards spectrum aggregation. Such aggregation of spectrum in these areas is excessive. Post-Transaction, the areas that exceed the spectrum screen pose a threat to the very “lifeblood of [the] free market economy.”

¹⁹ *In the Matter of Policies Regarding Mobile Spectrum Holdings*, WT Docket No. 12-269, Notice of Proposed Rulemaking, 27 FCC Rcd 11710, Attached Statement of Chairman Julius Genachowski (2012).

²⁰ 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 35-36 (“*AT&T/Leap Public Interest Statement*”). For example, Youghioghny Communications, LLC recognized that post-Transaction AT&T would have a significant regional spectrum concentration in the south Texas region. “From San Antonio south, the combined AT&T operation would have from as little as 140 MHz of spectrum in San Antonio to as much as 170 MHz in Corpus Christi and 180 MHz in McAllen and Brownsville. . . [which] pushes the aggregation level well over the brink.” Youghioghny Communications, LLC, Petition to Deny, WT Docket No. 13-193, 6 (filed Sept. 27, 2013).

²¹ The Joint Opposition also tries to offer the upcoming H Block and Incentive Auctions as additional spectrum acquisition opportunities in these CMAs (and across the nation), but, as the Applicants are fully aware, these spectrum opportunities will not be put to immediate use and certainly should not be included in this Transaction’s review.

²² *Public Interest Statement*, 35. Seven million people is nearly twice the population of Los Angeles and nearly equal to the population of New York City. If this Transaction were to trigger the spectrum screen in either of those markets, AT&T would no doubt be singing a far different tune. Instead, the markets that are covered are largely rural areas, suggesting that AT&T believes 7 million rural Americans are somehow less deserving of competitive protections than are urban Manhattans. CCA respectfully disagrees.

Requiring spectrum divestitures is a tool that the Commission can use – and has used many times in the past – to preserve competition in spectrum transactions. CCA continues to urge the Commission to require AT&T to divest spectrum comparable to that which it is acquiring.²³ At the very least, the Commission 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.

B. AT&T Must Continue To Provide Voice And Data Roaming Arrangements At Least As Favorable As Those Provided To Leap’s Competitors

Given the nationwide scope of the Transaction, and in particular the “spectrum concentration that raises the potential for competitive harm,” the Commission “must carefully consider whether to impose a roaming condition in the context of this transaction.”²⁴ If the Transaction is approved as proposed, the roaming market will suffer from the loss of a reasonable roaming partner, which will likely result in increased roaming costs passed through to consumers. Therefore, the Commission should require that AT&T honor existing Leap roaming agreements for the full term of the agreement or four years from the date of this Transaction’s closing (whichever is longer) and commit to offer 3G and 4G LTE roaming services to any requesting carrier under the same terms and conditions negotiated by AT&T’s competitors with Leap.

The Joint Opposition incorrectly argues that “Leap is simply not a significant provider of roaming services.”²⁵ In fact, Leap has a significant impact in the roaming market because Leap is

²³ See *CCA Petition*, 14-15.

²⁴ *AT&T/Qualcomm Order* ¶ 56.

²⁵ *Joint Opposition*, 39. Leap also provided an affidavit confirming this point.

a reasonable roaming partner. According to its website, Cricket offers 4G LTE data coverage over its own facilities in major metropolitan cities such as Houston, Austin, San Antonio, Philadelphia, Las Vegas, Phoenix and Tucson, and in several other areas (including Dallas/Fort Worth, Los Angeles and Atlanta) through service partnerships.²⁶ The Joint Opposition also asserts that “relatively few carriers have customers who roam on Leap’s network extensively,”²⁷ but it fails to recognize that Leap actually offers commercially reasonable roaming terms and conditions to these carriers that competitive carriers likely are unable to obtain from AT&T. To that effect, Leap acts as a market constraint and competitive check on roaming prices.

AT&T has demonstrated the exact opposite behavior. Due to its large national footprint, AT&T rarely, if ever, needs smaller carriers’ networks to fill coverage gaps. Thus, despite the FCC’s Data Roaming Order, roaming negotiations continue to remain very one-sided, with larger carriers like AT&T having significant bargaining advantages over the smaller carriers. AT&T largely has refused to offer commercially reasonable rates to competitive carriers. Even Leap has previously shown frustration by the fact that “AT&T has resisted roaming arrangements at every opportunity.”²⁸ Removing Leap from this market will eliminate an important market constraint and further weaken the competitive forces in an already challenging roaming market. Although the Joint Opposition attempts to offer a solution in that “[p]ost-closing, roaming alternatives will continue to exist throughout Leap’s network footprint for CDMA carriers” it conspicuously fails to state that these “alternatives” will be comparable.

²⁶ Cell Phone Coverage Map | Cricket Wireless, <http://www.mycricket.com/coverage/maps/wireless> (last visited Oct. 30, 2013).

²⁷ *Joint Opposition*, Strickland Decl. ¶ 3.

²⁸ Leap Wireless International, Inc. and Cricket Communications, Inc., Petition to Deny, WT Docket No. 11-65, 21 (filed May 31, 2011).

As recently as last January, Leap complained to the Commission of “the continuing challenges [it] has encountered in attempting to enter into 4G data roaming agreements with other wireless carriers.”²⁹ And the Commission has expressed concern by correctly predicting AT&T would be unlikely to offer 4G LTE roaming agreements in the near future.³⁰ If AT&T refuses to offer the roaming services, market dynamics dictate that a competitor like Leap will step in to fill the void. Indeed, that is precisely what has happened to date, and precisely what is in danger of being lost if the Transaction proceeds unconditioned. With AT&T and Verizon refusing to negotiate commercially reasonable 4G LTE roaming agreements, carriers will be significantly hindered in their attempts to reach nationwide 4G LTE coverage.

To mitigate the anti-competitive harms caused by the loss of Leap as an important roaming market participant, the Commission should require that AT&T honor existing Leap roaming agreements the later of the full term of the agreement or four years after the closing of the Transaction, and commit to offer 3G and 4G LTE roaming services to any requesting carrier under terms and conditions at least as favorable as those negotiated with Leap. Similar to Verizon’s commitments in the ALLTEL transaction, the Commission should require AT&T to offer “each regional small and/or rural carrier that has a roaming agreement with [Leap] the option to keep the rates set forth in that roaming agreement in force for the full term of the agreement [at a minimum of four years], notwithstanding any change of control or termination for convenience provisions that would give [AT&T] the right to accelerate the termination of

²⁹ Ex Parte Submission of Leap Wireless International, Inc. and Cricket Communications, Inc., WT Docket No. 05-265 (filed Jan. 23, 2013).

³⁰ *Data Roaming Order*, ¶ 27.

such agreement.”³¹ In addition, in this instance, AT&T should be required to offer such terms to carriers for 4G LTE services even if its agreements with such carriers are only for 3G services, and to offer substantially similar terms and conditions to other requesting carriers. It is common knowledge that 4G LTE services are more efficient and cost effective than 3G wireless services, so a 4G commitment is actually less costly for AT&T to abide by than a roaming obligation that simply encompasses 3G services. Finally, 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.³² Leap has previously noted that it has “kept spectrum unused so that [it] ha[s] a clear path to 4G,”³³ 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 internal decisions.

The Joint Opposition’s argument that the roaming issues identified by CCA are an industry-wide concern is misguided.³⁴ The Commission has previously considered transaction-specific roaming issues similar to the ones identified in CCA’s Petition and this Reply, and, as a

³¹ *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 (rel. Nov. 10, 2008).

³² 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).

³³ *Innovating Value for a Data Driven World*, <http://www.leapwireless.com/brands/nationwide-wireless>.

³⁴ *Joint Opposition*, 41.

result, has previously applied roaming conditions similar to those that CCA requests to remedy these problems.³⁵ The Joint Opposition’s related argument, that, to the extent commenters are dissatisfied with the roaming negotiation process or the terms and conditions for roaming, they may file a complaint with the Commission, is similarly unavailing.³⁶ The Commission previously has properly ruled that the adoption of its roaming rules “does not . . . obviate the need to consider whether there is any potential roaming-related harm that might arise” from a transaction.³⁷ This is particularly true in this instance, where the Transaction would result in the exit of a reasonable roaming partner, whose willingness to negotiate voice, 3G and 4G LTE roaming agreements has provided important competitive constraints on the roaming market.

III. THE COMMISSION SHOULD PRIORITIZE ITS MOBILE SPECTRUM HOLDINGS PROCEEDING

It comes as no surprise that AT&T is seeking to acquire Leap now, in light of the Commission’s pending proposal to reform its policies regarding mobile spectrum holdings. The Commission has expressed the need for a new screen that takes into account that “the number of spectrum bands used for mobile wireless services has expanded; new, innovative service offerings have been rolled out; increasingly sophisticated devices have been introduced into the marketplace; and consumers have adopted these devices to access a wide array of bandwidth-intensive applications.”³⁸ When the Commission announced its decision to review and reform its spectrum holdings policies, AT&T and Verizon rushed to acquire smaller carriers before the

³⁵ *In the Matter of Applications of AT&T, Inc. and Atlantic Tele-Network, Inc. For Consent To Assign or Transfer Control of Licenses and Authorizations*, WT Docket No. 13-54, Memorandum Opinion and Order, ¶ 95 (Sept. 20, 2013).

³⁶ *Joint Opposition*, 41.

³⁷ *AT&T/Qualcomm Order* ¶ 57.

³⁸ *In the Matter of Policies Regarding Mobile Spectrum Holdings*, WT Docket No. 12-269, Notice of Proposed Rulemaking, 27 FCC Rcd 11710, ¶ 2 (2012).

Commission imposed new regulations on spectrum holdings. Since the release of its Mobile Spectrum Holding Notice of Proposed Rulemaking in September 2012, there have been over 160 spectrum transfer and assignment transactions filed with the Commission by AT&T.³⁹ The Transaction is one of the many transactions that AT&T has sought out over the past year, hoping to “beat the clock” before the Commission modifies its approach and creates a rational spectrum aggregation review process.

To effectively combat the continuing consolidation of the industry and promote competition, CCA urges the Commission to promptly complete its mobile spectrum holdings proceeding. Outlining its approach to evaluating spectrum aggregation in the wireless industry will allow the Commission to meet its “goals of promoting competition yet make [its] policies regarding mobile spectrum holdings more clear, transparent, and predictable.”⁴⁰ As the DOJ has reasoned, “a set of well-defined, competition-focused rules for spectrum acquisition . . . would best serve the dual goals of putting spectrum to use quickly and promoting consumer welfare in wireless markets.”⁴¹

CCA has recommended that the Commission strengthen its spectrum screen by replacing its current approach with the following three separate thresholds for identifying competitive harms in the current wireless landscape:⁴² (1) a new threshold for spectrum below 1 GHz in local

³⁹ Figure compiled using the FCC’s Universal Licensing System Database.

⁴⁰ *In the Matter of Policies Regarding Mobile Spectrum Holdings*, WT Docket No. 12-269, Notice of Proposed Rulemaking, 27 FCC Rcd 11710, ¶ 45 (2012).

⁴¹ *DOJ Ex Parte Submission*, 1.

⁴² 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. *See also CCA Petition*, 12-13.

markets of one-quarter of the useable spectrum in a given market;⁴³ (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);⁴⁴ 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."⁴⁵ CCA's proposal takes into account the descent of the wireless marketplace towards a duopoly since the last comprehensive review of these issues – a descent that has been spearheaded by AT&T (along with Verizon). This consideration will help provide a more accurate representation of carriers' competitive positions and assist the Commission in its review of spectrum acquisitions.⁴⁶

IV. CONCLUSION

For the foregoing reasons, the Commission should condition any order approving the above-captioned Transaction on the spectrum divestitures and roaming commitments from AT&T recommended by CCA herein, and revise its mobile spectrum holdings policies with all deliberate speed.

⁴³ *CCA Mobile Spectrum Holdings Comments*, 11-12.

⁴⁴ *CCA Mobile Spectrum Holdings Comments*, 12.

⁴⁵ *CCA Mobile Spectrum Holdings Comments*, 13.

⁴⁶ *See e.g., DOJ Ex Parte Submission*, 9 ("[T]he Department believes it is important to consider the differing characteristics of spectrum in determining its contribution to a carrier's competitive position.").

Respectfully Submitted,

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October 31, 2013

CERTIFICATE OF SERVICE

I, C. Sean Spivey, hereby certify that on the 31st day of October, 2013, I caused a true and correct copy of the foregoing Reply to Joint Opposition to Petition to Condition to be sent by electronic mail to:

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/s/ C. Sean Spivey
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