

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

In the Matters of	)	
	)	
Beta Communications, L.L.C., Assignor, and	)	File No. 0000110639
Leap Wireless International, Inc., Assignee,	)	WTB Report No. 514
For Consent to Assign Station WPOJ702, Roswell,	)	
New Mexico	)	
	)	
And	)	
	)	
Beta Communications, L.L.C, Assignor, and	)	File No. 0000110695
Cricket Licensee (Reaaction), Inc., Assignee, For	)	WTB Report No. 514
Consent to Assign Station WPOJ700, Phoenix,	)	
Arizona, and Station WPOJ701, Reno, Nevada	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted:** December 8, 2000

**Released:** December 8, 2000

By the Chief, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau:

1. In this Order, we grant the above-referenced applications to assign two C block PCS licenses from Beta Communications, L.L.C. (“Beta”) to Leap Wireless International, Inc. (“Leap”) or Leap’s wholly owned subsidiary, Cricket Licensee (Reaaction), Inc. (“Cricket”). We deny petitions to deny these assignments filed by Nextel Communications, Inc. (“Nextel”) and Carolina PCS I Limited Partnership (“Carolina PCS”).<sup>1</sup>

2. Nextel argues that the Commission should further examine why Leap reported different figures to the Securities and Exchange Commission (“SEC”) regarding its total assets than it reported in its assignment applications. Specifically, Nextel states that, in its April 14, 2000 10-Q filing with the SEC, Leap’s consolidated balance sheet shows that, as of February 29, 2000, Leap had over \$1 billion in total assets.<sup>2</sup> In the pending assignment applications filed April 18, 2000, however, Leap stated its total assets as \$494.8 million.<sup>3</sup> Nextel argues that Leap must explain this discrepancy.

<sup>1</sup> See Comments On Or, In The Alternative, Petition to Deny Of Nextel Communications, Inc., filed May 26, 2000 (“Nextel Petition”); Petition to Deny, filed May 26, 2000 by Carolina PCS I Limited Partnership (“Carolina PCS Petition”).

<sup>2</sup> Nextel Petition at 2.

<sup>3</sup> See File No. 0000110639 at Schedule A; File No. 0000110695 at Schedule A.

3. In response, Leap states that, pursuant to the requirements of section 24.720(g) of the Commission's rules,<sup>4</sup> Leap reported its total assets based on its most recent audited financial statement, which reflects Leap's assets as of August 31, 1999, and that Leap provided that number in the assignment applications.<sup>5</sup> Further, Leap explains that interim quarterly financial statements filed by public companies with the SEC are not based on audited financial statements, but rather on a company's most recent unaudited interim reports. In this case, the 10-Q that Leap filed on April 14, 2000 with the SEC stated Leap's assets as of the first quarter of 2000.<sup>6</sup>

4. We believe that Leap complied with the Commission's rules by providing its total assets based on its most recent audited financial statement. The Commission's rules provide that, for applicants that utilize audited financial statements, total assets is defined as the applicant's most recent audited financial statement.<sup>7</sup> Therefore, Leap was entitled to base its eligibility to acquire these licenses on its 1999 audited financial statement and to report its total assets based on that accounting. Accordingly, we deny Nextel's petition.

5. Carolina PCS argues that Leap is ineligible to hold entrepreneurs' block PCS licenses because Carolina PCS's judicial appeal of the affirmative determination of Leap's eligibility remains pending. Therefore, Leap should not be permitted to acquire these licenses from Beta.<sup>8</sup> Further, Carolina PCS argues that Leap has somehow cast doubt on its qualifications as a licensee by notifying Carolina PCS that it was contemplating civil litigation against Carolina PCS.<sup>9</sup>

6. Leap responds that Carolina lacks standing to challenge these applications because it has not, and cannot, establish a threatened injury by virtue of Leap's acquisition or sale of any of the licenses at issue.<sup>10</sup> Leap states that Carolina has no relationship to the parties involved in the applications, does not do business in any of the markets involved, and has made no independent attempt to establish standing in these cases except derivatively by virtue of its then-pending Application for Review of the Commercial Wireless Division's ("CWD") determination that Leap qualifies to hold entrepreneurs' block PCS licenses.<sup>11</sup>

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<sup>4</sup> 47 C.F.R. § 24.720(g).

<sup>5</sup> Consolidated Opposition of Leap Wireless International, Inc., filed June 8, 2000 ("Leap Opposition") at 4-7 and Attachment (Leap's 1999 Consolidated Audited Financial Statement) at 15, 29. Because the filing deadline for Leap's opposition to Nextel's petition was different from the filing deadline for Leap's opposition to Carolina PCS's petition, Leap requested an additional three days to respond to Nextel's opposition so that Leap could respond to both petitions in a single opposition, and Leap indicates that Nextel consented to the extension. *Id.* at n.2. We agree that the extension is appropriate under these circumstances, and grant Leap's request.

<sup>6</sup> *Id.* at 5

<sup>7</sup> 47 C.F.R. § 24.720(g); *see also In re Applications of TeleCorp PCS, Inc., et al.*, DA 00-2443, at ¶ 29 (WTB, rel. Nov. 3, 2000).

<sup>8</sup> Carolina PCS Petition at 5-6.

<sup>9</sup> *Id.* at 6-7.

<sup>10</sup> Leap Opposition at 11-14.

<sup>11</sup> *See In re Applications of AirGate Wireless, L.L.C.*, Memorandum Opinion and Order, 14 FCC Rcd 11827 (WTB 1999) ("*AirGate Order*"). In the *AirGate Order*, CWD found Leap qualified to hold entrepreneurs' block licenses. Subsequently, based on CWD's determinations, the Auctions and Industry Analysis Division ("AIAD") (continued....)

According to Leap, in the one market where Carolina PCS and Leap might have overlapped – Greenwood South Carolina – Leap has abandoned plans to acquire that license.<sup>12</sup> Further, Leap argues that, assuming a direct injury to Carolina PCS could be established, that injury could not fairly be traced to the grant of the instant applications, nor could the injury possibly be prevented by denial of the applications.<sup>13</sup>

7. We find that Carolina PCS lacks standing to file a petition to deny against the above-captioned applications. Section 309(d)(1) of the Communications Act, as amended, permits any “party in interest” to file a petition to deny any application.<sup>14</sup> To establish standing, a petitioner must allege sufficient facts to demonstrate that grant of the subject application would cause the petitioner to suffer a direct injury.<sup>15</sup> The petitioner must further demonstrate a causal link between the claimed injury and the challenged action.<sup>16</sup> To demonstrate a causal link, a petitioner must establish that: (a) the injury fairly can be traced to the challenged action; and (b) the injury would be prevented or redressed by the relief requested.<sup>17</sup> We agree with Leap that Carolina PCS has not demonstrated an injury, or the likelihood of an injury, that is traceable to these proposed transactions or redressable by preventing Leap from purchasing these licenses from Beta. Therefore, we do not believe that Carolina PCS has shown that it is a party in

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of the Wireless Telecommunications Bureau granted additional applications for Leap to acquire entrepreneurs’ block licenses. See *In re Applications of PCS Devco, Inc., et al.*, Memorandum Opinion and Order, 15 FCC Rcd 2900, (AIAD 2000) (“*PCS Devco Order*”). Since the filing in April 2000 of the applications addressed herein, the Commission has affirmed the determination of the Division. *In re Applications of AirGate Wireless, L.L.C., et al.*, Memorandum Opinion and Order, FCC 00-269 (rel. July 27, 2000) (affirming *AirGate Order and PCS Devco Order*). Carolina PCS appealed the Commission’s affirmance to the U.S. Court of Appeals for the District of Columbia Circuit. *Carolina PCS I Limited Partnership v. Federal Communications Commission*, Case No. 00-1386 (D.C. Cir. filed Aug. 25, 2000). However, Carolina PCS has recently filed a request for approval of a settlement agreement between itself and Leap that, if approved and implemented, would involve the withdrawal of any pending Carolina PCS challenges to Leap’s qualification to hold entrepreneurs’ block PCS licenses. See Request for Approval of Settlement Agreement, filed December 4, 2000 by Carolina PCS I Limited Partnership.

<sup>12</sup> Leap Opposition at 12.

<sup>13</sup> *Id.* at 13-14. Carolina PCS responds with skepticism to Leap’s statements regarding abandoning Greenwood and argues that it may someday become one of Leap’s competitors. Reply of Carolina PCS I Limited Partnership to Consolidated Opposition to Petitions to Deny, filed June 14, 2000, at 2-6.

<sup>14</sup> 47 U.S.C. § 309(d)(1). We recently found, under similar circumstances, that Carolina PCS lacked standing to file a petition to deny against Leap. See *In the Matters of Leap Wireless International, Inc. and Nedelco, Inc., et al.*, Memorandum Opinion and Order, DA 00-2311, ¶ 5 (CWD/PRB, rel. Oct. 13, 2000) (“*Leap/Nedelco Order*”). Although certain aspects of the *Leap/Nedelco Order* have been furthered addressed on reconsideration, the findings with respect to Carolina PCS’ challenges of the applications addressed in the *Leap/Nedelco Order* were not addressed on reconsideration and remain fully effective. See *In the Matters of Leap Wireless International, Inc. and Nedelco, Inc., et al.*, Order on Reconsideration, DA 00-2452, ¶ 9 (CWD/PRB, rel. Oct. 30, 2000).

<sup>15</sup> See *Leap/Nedelco Order*, DA 00-2452, at ¶ 5 (citing *Los Angeles Cellular Telephone Co.*, 13 FCC Rcd. 4601, 4603-04 (CWD 1988) and cases cited therein).

<sup>16</sup> See *Leap/Nedelco Order*, DA 00-2452, at ¶ 5 (citing *Duke Power Co., v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 74, 81 (1978) (“*Duke Power Co.*”).

<sup>17</sup> See *Leap/Nedelco Order*, DA 00-2452, at ¶ 5 (citing *Duke Power Co.*, 438 U.S. at 74, 81).

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interest under section 309(d)(1) of the Communications Act, as amended,<sup>18</sup> or section 1.939(a) of the Commission's rules,<sup>19</sup> and we dismiss Carolina PCS's petition.

8. Even if Carolina PCS were found to have standing to challenge the grants of these applications, we would deny Carolina PCS's petitions on substantive grounds. The arguments that Carolina PCS raises here against Leap include the same arguments that Carolina PCS raised in previous proceedings regarding Leap's qualifications, and the Commission recently dismissed on substantive grounds Carolina PCS' challenge to Leap's qualification to hold entrepreneurs' block PCS licenses.<sup>20</sup> With respect to Carolina PCS' claim that Leap has called into question its basic qualifications by threatening civil litigation against Carolina PCS, we have also recently found this allegation not to merit further scrutiny, and we find no reason to alter that conclusion in this proceeding.<sup>21</sup>

9. ACCORDINGLY, IT IS ORDERED that, pursuant to Sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), and Sections 0.331 and 1.939 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.939, the request for an extension of time by Leap Wireless International, Inc. to file its Consolidated Opposition IS GRANTED;

10. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), and Sections 0.331 and 1.939 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.939, the Comments On Or, In The Alternative, Petition to Deny Of Nextel Communications, Inc. IS DENIED.

11. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), and Sections 0.331 and 1.939 of the Commission's rules, 47 C.F.R. § 0.331, 1.939, the Petition to Deny filed by Carolina PCS I Limited Partnership IS DENIED.

12. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), and Section 0.331 of the Commission's rules, 47 C.F.R. §§ 0.331, the above-referenced applications ARE GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Paul D'Ari  
Chief, Policy and Rules Branch  
Commercial Wireless Division  
Wireless Telecommunications Bureau

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<sup>18</sup> 47 U.S.C. § 309(d)(1).

<sup>19</sup> 47 C.F.R. § 1.939(a).

<sup>20</sup> See *In re Applications of AirGate Wireless, L.L.C. and Crickets Holdings, Inc.*, Memorandum Opinion and Order, FCC 00-269 (rel. July 27, 2000).

<sup>21</sup> See *Leap/Nedelco Order*, DA 00-2311, at ¶ 7.

