

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

In the Matter of)	
)	
PCS Devco, Inc.)	
Application for Assignment of Authorization)	FCC File No. 0000032055
For Station KNLF998)	Public Notice Report No. 346
)	
ChaseTel Licensee Corp.)	FCC File No. 0000027712
Application for Assignment of Authorizations)	Public Notice Report No. 346
For Stations KNLF459, KNLF460, KNLF461)	
KNLF462, KNLF463, KNLF464, KNLF465)	
KNLF466, KNLF467, KNLF468 and KNLF469)	
)	
Leap Wireless International, Inc.)	FCC File No. 0000031464
Application for Assignment of Authorization)	Public Notice Report No. 353
For Station WPOK577)	

MEMORANDUM OPINION AND ORDER

Adopted: February 11, 2000

Released: February 14, 2000

By the Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau:

I. BACKGROUND

1. We have before us Petitions to Deny filed by Carolina PCS I Limited Partnership ("Carolina PCS") on November 19, 1999.¹ These Petitions to Deny were filed in response to Public Notices listing as accepted for filing the applications of (1) ChaseTel Licensee Corporation ("ChaseTel") and Leap Wireless International Inc. ("Leap") for assignment of eleven PCS C block licenses² from ChaseTel to Leap; (2) PCS Devco, Inc. ("Devco") and Cricket Holdings Dayton, Inc. ("Cricket") for assignment of a PCS F block license from Devco to Cricket; and (3) Leap and Devco for assignment of a PCS C block

¹ Carolina PCS I Limited Partnership Petition to Deny Application for Assignment of PCS Devco, Inc., filed November 19, 1999; Carolina PCS I Limited Partnership Petition to Deny Application for Assignment of ChaseTel Licensee Corp., filed November 19, 1999; Carolina PCS I Limited Partnership Petition to Deny Application for Assignment of Leap Wireless International, Inc., filed November 24, 1999.

² The eleven PCS C block licenses held by ChaseTel are comprised of 15 megahertz disaggregated blocks.

license from Leap to Devco.³ For the reasons discussed below, we conditionally grant the ChaseTel and Devco assignment applications, and grant the Leap assignment application.

II. DISCUSSION

A. *ChaseTel and Devco Applications for Assignment*

2. Carolina PCS generally contends that Leap and Cricket, a wholly-owned subsidiary of Leap, are not qualified to hold PCS C and F block licenses under the Commission's rules. Specifically, Carolina PCS contends that its pending application for review challenging an earlier order of the Commercial Wireless Division ("CWD") of the Wireless Telecommunications Bureau ("Bureau"), which found Leap and Cricket eligible to hold PCS C and F block licenses with respect to other applications, prevents a finding here that Leap and Cricket are eligible for C and F block licenses.⁴

3. CWD found in the *Leap MO&O* that, subject to certain conditions, Leap and Cricket are eligible to hold C and F block licenses under the publicly traded corporation ("PTC") exception to the general requirement that a C or F block applicant have gross revenues for each of the past two years of less than \$125 million and total assets of less than \$500 million.⁵ Carolina PCS asserts that the conclusion reached in the *Leap MO&O* is unsupportable and cannot establish Leap's and Cricket's eligibility here. Moreover, Carolina PCS argues that if we grant the assignment applications, we will effectively establish Leap's and Cricket's eligibility to hold C and F block licenses before the Commission decides the eligibility issue raised in Carolina PCS's application for review of the *Leap MO&O*.

4. We disagree. Carolina PCS has failed to persuade us not to follow the decision of CWD in the *Leap MO&O* regarding the eligibility of Leap and Cricket to hold C and F block licenses. We view that order to be dispositive of the issues raised here by Carolina PCS. There is nothing to prevent Carolina PCS from seeking review of our conclusion here as it has of the *Leap MO&O*. We therefore conditionally grant the applications of (1) ChaseTel and Leap for assignment of eleven PCS C block licenses from ChaseTel to Leap; and (2) Devco and Cricket for assignment of a PCS F block license from Devco to Cricket. We conditionally grant these applications subject to all conditions imposed by CWD in the *Leap MO&O*.

³ See Wireless Telecommunications Bureau Assignment of Authorization and Transfer of Control Applications: Accepted for Filing, *Public Notice*, Public Notice Report No. 346 (October 20, 1999); see also Wireless Telecommunications Bureau Assignment of Authorization and Transfer of Control Applications: Accepted for Filing, *Public Notice*, Public Notice Report No. 353 (October 27, 1999). ChaseTel and Leap filed their application for assignment of eleven PCS C Block licenses on October 14, 1999. Devco and Cricket filed their application for assignment of a PCS F block license on October 14, 1999. Leap and Devco filed their application for assignment of a PCS C block license on October 15, 1999.

⁴ See Application of Airgate Wireless, L.L.C., Assignor, and Cricket Holdings, Inc., Assignee, for Consent to Assign Broadband PCS F Block Licenses KNLF882, KNLG279, KNLG280 and KNLG281, FCC File No. 000002035; Application of Leap Wireless International, Inc. for Authorization to Construct and Operate 36 Broadband PCS C Block Licenses, FCC File No. 0000012974, *Memorandum Opinion and Order*, 14 FCC Rcd 11827 (1999) ("*Leap MO&O*"). See also Carolina PCS I Limited Partnership Application for Review, filed August 23, 1999.

⁵ See 47 C.F.R. §§ 24.709(a)(1) and (b)(2).

B. *Leap Application for Assignment*

5. With respect to this application, Carolina PCS contends that Leap's eligibility to hold the license it seeks to assign has not been established because Carolina PCS's application for review of the *Leap MO&O* is still pending.

6. We disagree. The mere pendency of an application for review does not make CWD's order ineffective. Any assignment is subject to the outcome of pending proceedings challenging the underlying eligibility of the assignor to hold the assigning license. Of course, subject to the Commission's rules, Carolina PCS is free to seek review of this decision as well. Accordingly, we grant the application of Leap and Devco for assignment of a PCS C block license from Leap to Devco.

III. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED, pursuant to sections 4(i) and 309(d)(2) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(d)(2), and Section 0.331 of the Commission's rules, 47 C.F.R. § 0.331, the Carolina PCS I Limited Partnership Petition to Deny Application for Assignment of PCS Devco, Inc., filed November 19, 1999; the Carolina PCS I Limited Partnership Petition to Deny Application for Assignment of ChaseTel Licensee Corp., filed November 19, 1999; and the Carolina PCS I Limited Partnership Petition to Deny Application for Assignment of Leap, filed November 24, 1999, ARE HEREBY DENIED.

8. IT IS FURTHER ORDERED, pursuant to sections 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), grant of the application for assignment filed by ChaseTel and Leap on October 14, 1999, is subject to the conditions stated in the approval of the AirGate Wireless, L.L.C. to Cricket application for assignment, specifically, paragraphs 50 through 56 of the *Leap MO&O*.

9. IT IS FURTHER ORDERED, pursuant to sections 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), grant of the application for assignment filed by Devco and Cricket on October 14, 1999, is subject to the conditions stated in the approval of the AirGate Wireless, L.L.C. to Cricket application for assignment, specifically, paragraphs 50 through 56 of the *Leap MO&O*.

10. IT IS FURTHER ORDERED, pursuant to sections 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), approval of the applications for assignment of ChaseTel to Leap, Devco to Cricket, and Leap to Devco, is conditioned on the execution by ChaseTel, Leap, Devco, Cricket and the Commission of all Commission loan documents, unless the licenses being assigned have been paid in full. Unless the licenses that ChaseTel, Devco and Leap will have been paid in full, this approval is conditioned upon Leap's, Devco's and Cricket's execution of the applicable financing statements (*i.e.*, the UCC-1 Forms) and payment, on or before the consummation date, of all costs associated with the preparation and recordation of the financing statements. In addition, all installment payments must be current on the consummation date. To be current, the installment payment may not be in the non-delinquency period or grace period. In addition, there must be no outstanding fees due to the Commission. No licenses will be issued to the assignee until the Commission receives notification pursuant to Section 1.948(d) of the Commission's rules, 47 C.F.R. § 1.948(d), that all conditions that must be met at or before consummation have been satisfied, including execution of the appropriate financing documents. Failure of the parties to comply with any of the financial obligations described above will result in automatic cancellation of the Commission's approval hereunder and in dismissal of

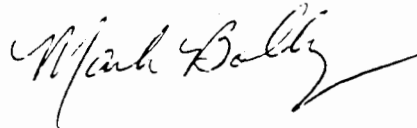
the applications for assignment.

11. IT IS FURTHER ORDERED, pursuant to sections 4(i) and 309(d)(2) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(d)(2), and Sections 0.331, 1.948(d) and 24.830 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.948(d) and 24.830, the application for assignment filed by ChaseTel and Leap on October 14, 1999, IS HEREBY GRANTED, subject to the above conditions.

12. IT IS FURTHER ORDERED, pursuant to sections 4(i) and 309(d)(2) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(d)(2), and Sections 0.331, 1.948(d) and 24.830 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.948(d) and 24.830, the application for assignment filed by Devco and Cricket on October 14, 1999, IS HEREBY GRANTED, subject to the above conditions.

13. IT IS FURTHER ORDERED, pursuant to sections 4(i) and 309(d)(2) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(d)(2), and Sections 0.331, 1.948(d) and 24.830 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.948(d) and 24.830, the application for assignment filed by Leap and Devco on October 15, 1999, IS HEREBY GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Mark Bollinger", with a long, sweeping horizontal stroke extending to the right.

Mark Bollinger,
Deputy Chief, Auctions and Industry Analysis Division
Wireless Telecommunications Bureau