

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

In the Matters of	)	
	)	
Leap Wireless International, Inc. and Nedelco, Inc.	)	File No.0000078055
for Assignment of PCS Licenses for	)	Public Notice Report No. 455
Stations WPOK584, WPOK593	)	
	)	
Zuma PCS, LLC and Leap Wireless International,	)	File Nos. 0000083794, 0000083799, and
Inc. for Assignment of PCS Licenses for	)	0000083814
Stations WPOJ838, WPOJ839, WPOJ841	)	Public Notice Report No. 466
	)	
Radiofone PCS, LLC and Leap Wireless	)	File No. 0000083827
International, Inc. for Assignment of PCS License	)	Public Notice Report No. 466
for Station KNLG213	)	
	)	
Leap Wireless International, Inc. and CM PCS	)	File No. 0000119257
LLC for Assignment of PCS License for Station	)	Public Notice Report No. 528
KNLG684	)	
	)	
Chandu Patel d/b/a Center Point PCS and Cricket	)	File No. 0000119262
Licensee (Reauction), Inc. for Assignment of PCS	)	Public Notice Report No. 528
License for Station WPOJ805	)	
	)	
Lakeland PCS LLC and Cricket Licensee	)	File No. 0000191738
(Lakeland) Inc. for Assignment of PCS License for	)	Public Notice Report No. 597
Station KNLG741	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: October 12, 2000**

**Released: October 13, 2000**

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

1. In this Order, we grant the eight above-referenced applications that seek consent for the assignment of six C block and three F block PCS licenses. Leap Wireless International, Inc. or one of its affiliates (“Leap”) is a party to each transaction. We also dismiss the Petition to Deny filed against each application by Carolina PCS I Limited Partnership (“Carolina PCS”), because we find that Carolina PCS does not have standing to challenge these applications.

2. The above-referenced applications seek consent for assignment of: (1) two C Block licenses from Leap to Nedelco, Inc. (“Nedelco”); (2) three C Block licenses from Leap to Zuma PCS, LLC (“Zuma”) or an affiliate of Zuma; (3) one F Block license from Radiofone PCS, LLC to Leap; (4) one F Block license from Leap to CM PCS LLC (“CM PCS”); (5) one C Block license from Chandu Patel d/b/a Center Point PCS (“Center Point”) to Cricket Licensee (Reauction), Inc., an affiliate of Leap; and (6) one F

Block license from Lakeland PCS LLC to Cricket Licensee (Lakeland) Inc., a subsidiary of Leap. In each case, in virtually identical petitions, Carolina PCS argues that Leap does not qualify as a Designated Entity (“DE”) and, therefore, is not qualified to control, hold, or assign C and F block PCS licenses.<sup>1</sup>

3. In opposition, Leap argues that Carolina PCS 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>2</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 the Applications for Review that had been pending until the Commission’s July 27, 2000 decision.<sup>3</sup> Further, in the one market where Carolina PCS and Leap might have overlapped -- Greenwood, South Carolina -- Leap states that it has abandoned plans to acquire that license. Leap accordingly concludes that there is no competitive overlap between Leap’s service area and Carolina PCS’s service area, or the service area of any of the other applicants and Carolina PCS’s service area.<sup>4</sup> With respect to the other elements of standing, Leap argues that, assuming a direct injury to Carolina PCS could be established, that injury could not fairly be traced to grant of the instant applications, nor could the injury possibly be prevented by denial of the applications.<sup>5</sup>

4. The gravamen of Carolina PCS’s argument in response is that it may someday become one of Leap’s competitors.<sup>6</sup> Further, Carolina PCS challenges the truth of Leap’s statement that Leap abandoned

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<sup>1</sup> Petition to Deny, filed March 15, 2000 by Carolina PCS I Limited Partnership (“Nedelco Petition”); Petition to Deny, filed March 31, 2000 by Carolina PCS I Limited Partnership (File Nos. 0000083794, 0000083799, 0000083814) (“Zuma Petition”); Petition to Deny, filed March 31, 2000 by Carolina PCS I Limited Partnership (File No. 0000083827) (“Radiofone Petition”); Petition to Deny, filed June 9, 2000 by Carolina PCS I Limited Partnership (File No. 0000119257) (“CM PCS Petition”); Petition to Deny, filed June 9, 2000 by Carolina PCS I Limited Partnership (File No. 0000119262) (“Center Point Petition”); Petition to Deny, filed August 25, 2000 by Carolina PCS I Limited Partnership (“Lakeland Petition”).

<sup>2</sup> Opposition of Leap Wireless International, Inc., filed March 28, 2000 (“Nedelco Opposition”); Opposition of Leap Wireless International, Inc., filed April 13, 2000 (File Nos. 0000083794, 0000083799, 0000083814), at 2-4 (“Zuma Opposition”); Opposition of Leap Wireless International, Inc., filed April 13, 2000 (File No. 0000083827) (“Radiofone Opposition”); Consolidated Opposition of Leap Wireless International, Inc., filed June 22, 2000 (“CM PCS Opposition”), at 2-4; Opposition of Leap Wireless International, Inc., filed Sept. 5, 2000 at 2-4 (“Lakeland Opposition”). Radiofone PCS, L.L.C. also challenges Carolina PCS’s standing, raising many of the same arguments as Leap. *See* Opposition to Petition to Deny, filed April 13, 2000 by Radiofone PCS, L.L.C., at 2-3.

<sup>3</sup> Nedelco Opposition at 2; Zuma Opposition at 2; Radiofone Opposition at 2; CM PCS Opposition at 2; Lakeland Opposition at 2. *See infra* n.13 and accompanying text (discussing Commission’s July 27, 2000 decision).

<sup>4</sup> Nedelco Opposition at 3; Zuma Opposition at 3; Radiofone Opposition at 3; CM PCS Opposition at 3; Lakeland Opposition at 3.

<sup>5</sup> Nedelco Opposition at 4; Zuma Opposition at 4; Radiofone Opposition at 4; CM PCS Opposition at 4; Lakeland Opposition at 4.

<sup>6</sup> Reply of Carolina PCS I Limited Partnership to Opposition of Leap Wireless International, Inc., filed April 4, 2000, at 2-4 (“Nedelco Reply”); Consolidated Reply of Carolina PCS I Limited Partnership to Oppositions to Petitions to Deny, filed April 25, 2000 (File Nos. 0000083794, 0000083799, 0000083814), at 2-4 (“Zuma Reply”); Consolidated Reply of Carolina PCS I Limited Partnership to Oppositions to Petitions to Deny, (continued....)

plans to acquire the Greenwood, South Carolina license that Leap originally intended to acquire from AirGate Wireless, L.L.C.<sup>7</sup>

5. 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>8</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>9</sup> The petition must further demonstrate a causal link between the claimed injury and the challenged action.<sup>10</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>11</sup> We agree with Leap that Carolina PCS has not demonstrated an injury, or even the likelihood of an injury, that is traceable to these proposed transactions or redressable by preventing the transactions. Therefore, we do not believe that Carolina PCS has shown that it is a party in interest under section 309(d)(1) of the Communications Act, as amended, 47 U.S.C. § 309(d)(1), or section 1.939(a) of the Commission's rules, 47 C.F.R. § 1.939(a), and we dismiss Carolina PCS's petitions.

6. Even if Carolina PCS did have standing to challenge the grants of these applications, we would deny Carolina PCS' petitions on substantive grounds. The arguments that Carolina PCS raise against Leap include the same arguments that Carolina PCS raised in previous proceedings regarding Leap's qualifications.<sup>12</sup> Recently, the Commission dismissed two Applications for Review filed by Carolina PCS with respect to those arguments.<sup>13</sup> With one exception, the petitions addressed herein raise no new arguments and cite no new evidence beyond the arguments made in the recently-denied Applications for Review.

7. In the CM PCS Petition, Center Point Petition, and the Lakeland Petition, Carolina PCS raises one argument that has not been previously addressed by the Commission. Carolina PCS argues that Leap has somehow cast doubt on Leap's qualifications as a licensee by notifying Carolina PCS that Leap

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filed April 25, 2000 (File No. 0000083827), at 2-4 ("Radiofone Reply"); Reply of Carolina PCS I Limited Partnership to Consolidated Opposition to Petitions to Deny, filed June 29, 2000, at 2-4 ("CM PCS/Patel Reply").

<sup>7</sup> Nedelco Reply at 1-4; Zuma Reply at 1-5; Radiofone Reply at 2-5; CM PCS/Patel Reply at 1-6; Lakeland Reply at 1-6.

<sup>8</sup> 47 U.S.C. § 309(d)(1).

<sup>9</sup> See *Los Angeles Cellular Telephone Co.*, 13 FCC Rcd. 4601, 4603-4604 (CWD 1998), citing *AmericaTel Corp.*, 9 FCC Rcd. 3993, 3995 (1994), citing *Sierra Club v. Morton*, 405 U.S. 727, 733 (1972); see also *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992); *Warth v. Seldin*, 422 U.S. 490, 508 (1975).

<sup>10</sup> See *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 74, 81 (1978).

<sup>11</sup> *Id.* at 74, 81.

<sup>12</sup> See *AirGate Wireless, L.L.C., Assignor, and Cricket Holdings, Inc. Assignee, and Application of Leap Wireless International, Inc. for Authorization to Construct and Operate 36 Broadband PCS C block Licenses*, Memorandum Opinion and Order, 14 FCC Rcd 11,827 (CWD, 1999).

<sup>13</sup> See *In re Applications of AirGate Wireless, L.L.C., and Cricket Holdings, Inc.*, Memorandum Opinion and Order, FCC 00-269 (rel. July 27, 2000).

was contemplating civil litigation against Carolina PCS.<sup>14</sup> We agree with Leap that this action does not affect Leap's qualifications to hold Commission licenses.<sup>15</sup>

7. 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 Section 0.331 of the Commission's rules, 47 C.F.R. § 0.331, the respective Petitions to Deny each of the above-referenced applications filed by Carolina PCS I Limited Partnership are hereby DENIED.

8. 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>14</sup> CM PCS Petition at 6-7; Center Point Petition at 6-7; Lakeland Petition at 8-9.

<sup>15</sup> See, e.g., CM PCS/Center Point Opposition at 11-13 (citing *Adlai E. Stevenson IV*, 5 FCC Rcd. 1588 (1990)).