cricket

July 6, 2009

The Honorable Herb Kohl, Chairman
Subcommittee on Antitrust, Competition Policy and Consumer Rights
Committee on the Judiciary
United States Senate
308 Senate Hart Building
Washington, DC 20510

Dear Chairman Kohl:

In response to your questions following the June 16, 2009 hearing entitled, "Cell Phone Text Messaging Rate Increases and the State of Competition in the Wireless Market," I submit the following answers on behalf of Cricket:

1) **Are there difficulties in gaining the right to "roam" on other carriers' networks a barrier to Cricket becoming a national competitor? Please explain. What regulatory reforms do you believe could address this issue?**

The difficulties that Cricket and other mid-sized and rural carriers face in negotiating roaming agreements with the nation's largest carriers are definitely a barrier to effective competition. As Cricket noted in comments that it recently filed with the FCC on the state of competition in the wireless industry, automatic roaming agreements play a critical role in the wireless industry, plugging coverage holes that exist in *every* carrier's network so that subscribers can obtain seamless coverage wherever they travel. As a result of concentration within the wireless industry, the largest carriers have both the incentive and the ability to foreclose competition and engage in anticompetitive practices. The competitive problems are even more severe in wholesale markets, because carriers can only enter into agreements with other carriers offering service on a compatible format (i.e., CDMA, GSM, and iDEN).

There are several regulatory reforms that Cricket believes are necessary to ensure that there is a vibrant community of wireless providers, including mid-sized and rural carriers, so that all consumers have a range of competitive options from which to choose:

First, the FCC should close a loophole in its 2007 order on roaming known as the in-market exception, under a carrier may refuse roaming service in any area where the requesting carrier holds a wireless license or spectrum usage rights. *See Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15817, 15835 ¶ 48 (2007). That loophole does not serve customers or promote competition; it simply enables the nation's largest carriers to place substantial obstacles in the path of their competitors. Several carriers (including Cricket) have filed petitions for reconsideration in WT Docket No. 05-265 that are primarily focused on eliminating the in-market exception, and those petitions are still pending. The entire wireless industry—except for Verizon and AT&T—have allied to support repeal of the in-market exception.

Second, the FCC should implement an automatic data roaming obligation. In its 2007 order, the FCC declined to impose any roaming obligation for non-interconnected services, such as data roaming for

wireless broadband. The FCC instead sought further comment on whether automatic roaming should apply to data, but so far it has not taken any action on that score. Cricket views an automatic data roaming obligation as critical to the continued growth of competitive wireless service offerings that will discipline the pricing and services of entrenched "big wireless" operators Verizon and AT&T. A data roaming obligation would also promote ubiquitous broadband availability. Congress recently allocated more than $7 billion in grants to encourage broadband availability and adoption, and wireless broadband can offer connectivity where no fixed service is available.

Third, the FCC should take steps to correct the excessive concentration of wireless spectrum in the hands of the nation's largest carriers. Specifically, Cricket and other mid-sized and rural carriers have urged the FCC (i) to identify and allocate additional spectrum to meet the growing demand for wireless voice, broadband and other advanced data services, and (ii) to adopt auction eligibility regulations to ensure that licenses are assigned to a range of different providers to promote competition and prevent the nation's largest providers from stockpiling even more spectrum.

2) (a) Do high costs imposed on you for ROW (rights of way), pole attachments, and cell-tower siting impact consumers? Please explain.

Local jurisdictions in many cases directly impact how quickly wireless carriers can bring new services to consumers. As a new entrant in numerous cities around the country, Cricket must work with local jurisdictions to gain approval to construct cell sites or simply co-locate antennas on existing structures. There is little predictability as each jurisdiction operates its own timeline and delays are frequent. On behalf of the wireless industry, CTIA has filed a petition with the FCC seeking a 45- and 75-day "shot clock" for siting consideration decisions. *See Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance*, WT Docket No. 08-165 (petition filed July 11, 2008). Cricket supports that petition.

(b) Do rates you pay to other phone companies to terminate traffic to your customers originate impact consumers? Please explain.

Yes. While most wireless carriers terminate traffic on a "bill and keep" basis, many ILECs and CLECs charge high per-minute fees for traffic termination. These fees constitute a high percentage of costs to operate a wireless carrier which are passed onto consumers. There are also many instances of "traffic pumping" schemes whereby traffic only originates one-way such as with "chat lines." Cricket supports intercarrier compensation reform by which all carriers exchange traffic on a "bill and keep" basis. The FCC has periodically attempted to make comprehensive reforms to the intercarrier compensation scheme, but many of these issues remain unresolved. *See Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92

(c) How do rates a carrier pays to backhaul traffic to other companies to and from a cell-tower impact consumers? Please explain.

Backhaul or "special access" is becoming a more expensive component of operating wireless service. As consumers demand more data-heavy applications such as video, the amount of backhaul required increases. Because the incumbent telephone companies have considerable market power in this area, Cricket believes that it is necessary for the FCC to intervene in order to ensure that rates are fair and reasonable. In 2005, the FCC released a Notice of Proposed Rulemaking to examine the regulatory framework to apply a price cap on interstate special access services. *See Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, *AT&T Corp. Petition for Rulemaking to Reform*

Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, RM-10593, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994 (2005). In 2007, the Commission asked the parties to refresh the record with additional information. *See* FCC Public Notice, Parties Asked to Refresh Record in the Special Access Notice of Proposed Rulemaking, 22 FCC Rcd 13352 (2007). The Commission has not yet acted on that issue. A range of industry participants have formed a coalition (the NoChokePoints Coalition) to address the concerns over special access charges—additional information about the coalition may be found at http://nochokepoints.org/

(d) With respect to any of these issues, do you advocate any regulatory or legal changes?

See above.

3) Does Cricket face challenges in gaining needed spectrum? Please explain. With respect to this issue, do you advocate any regulatory or legal changes?

As wireless broadband and other high-capacity data services become more prevalent, additional spectrum will be necessary to provide the speeds and coverage that consumers increasingly demand. Under the FCC's existing policies, however, the nation's largest carriers have been able to stockpile vast amounts of available spectrum, depriving mid-sized and rural carriers of this much-needed resource. For example, in-the most recent auction of 700 MHz spectrum, Verizon and AT&T acquired the lion's share of available spectrum. And, in Auction 66 (which assigned-AWS-1 spectrum), the four largest carriers accounted for 78 percent of all the winning bids, and they won approximately 60 percent of the total MHz-POPs available in that auction. The largest carriers are likely to use their spectrum holdings to prevent effective competition and demand that other carriers pay exorbitant rates or agree to unreasonable terms in order to access such spectrum.

As noted above, Cricket and other mid-sized and rural carriers have urged the FCC (i) to identify and allocate additional spectrum to meet the growing demand for wireless voice, broadband and other advanced data services, and (ii) to adopt auction eligibility regulations to ensure that licenses are assigned to a range of different providers to promote competition and prevent the nation's largest providers from stockpiling even more spectrum.

Sincerely,



Laurie Itkin
Director, Government Affairs