



Written Testimony of

Laurie Itkin

Director of Government Affairs

Leap Wireless International, Inc. and Cricket Communications, Inc.

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Chairman Kohl and Members of the Subcommittee, my name is Laurie Itkin and I am Director of Government Affairs for Leap Wireless International, Inc., and its wholly owned subsidiary, Cricket Communications, Inc. (collectively, "Cricket"). On behalf of Cricket, I thank you for inviting me to testify on the competitiveness of the wireless industry. While I understand the focus of today's hearing is on the *retail* market for text messaging, which I will address, I would also like to raise Cricket's concerns about the *wholesale* market for text messaging, as well as voice and data services. A properly functioning wholesale market allows small and mid-sized carriers to create and maintain vigorous competition in the industry, driving prices down and value up. But first I would like to describe my company and the unique role Cricket plays in the wireless marketplace.

I. OVERVIEW OF CRICKET'S SERVICES AND SUBSCRIBERS

Cricket was launched a decade ago and has grown into the seventh largest facilities-based wireless carrier in the U.S. Some have called us the "Poster Child" for the Federal Telecommunications Act. Along with our joint venture partners, we have built a network covering almost 84 million individuals in 32 states and we are steadily expanding into new markets where the telecommunications needs of the community are not being met by existing providers.

Cricket provides its over four million customers with unlimited voice, text messaging and wireless broadband services for a flat monthly rate without requiring a fixed-term contract, credit check or early termination fees. These services are specifically tailored to bring the benefits of wireless telecommunications to consumers left behind by other providers. Cricket's unique and diverse customer base reflects the company's commitment to reach the underserved. Hispanics,

African-Americans, and other minorities comprise the majority (56 percent) of Cricket's customers, compared with just 29 percent of other wireless carriers' customers. Additionally, 74 percent of Cricket's customers have annual household incomes of less than \$50,000 and 62 percent have annual incomes of less than \$35,000. In contrast, just 32 percent of other wireless carriers' customers have annual household incomes of less than \$50,000.

The usage patterns of Cricket's customers also differ from other wireless consumers. Company surveys indicate that Cricket's customers use almost twice as many minutes per month as the industry average. Approximately 70 percent of Cricket's customers have "cut the cord" and live in a household without traditional landline phone service, compared to the industry average of 15 percent. And nearly 50 percent of customers subscribing to Cricket's flat-rate wireless broadband service have never had Internet access at home—not even dial-up.

II. THE MARKET FOR TEXT MESSAGING SERVICE

Since its inception, Cricket has never charged its customers a penny for incoming text messages, regardless of the customer's selected calling plan. There has been much in the news over the past few years about consumers receiving unsolicited text messages and, adding insult to injury, being charged for them. While many carriers are exploring ways to protect their customers from "spam," Cricket's gone a step farther by ensuring our customers never get charged for it. We at Cricket are pleased to provide an alternative to parents who are shocked to receive a \$600 bill caused by a child's text messaging frenzy. Customers subscribing to Cricket's \$40 plan receive unlimited incoming and outgoing text messaging, in addition to unlimited local and long distance calling. As a company committed to offering innovative and value-rich services to our customers, we recently began offering unlimited text messaging to Mexico for only \$3 per month.

Cricket is the pioneer of affordable, unlimited wireless services – all offered on a month-to-month basis. We provide a competitive alternative to those consumers who do not want to be hit with hefty early termination fees if they want to change carriers.

As the Subcommittee today examines why the four largest carriers recently raised their prices for text messaging, Cricket would like to offer a simple observation: *the best regulator of prices is a competitive marketplace*. Cricket is providing competitive pressures on prices – recently, many of our competitors have offered “copy cat” plans in certain markets, trying to replicate Cricket’s success with unlimited pricing (although often at higher monthly rates). So how about creating that type of robust competition in every area of the country? What is preventing that dynamic from occurring? There are two interlinked policy issues over which the U.S. Senate and specifically this Subcommittee can engage: spectrum consolidation and the wholesale pricing (and related terms) for roaming services imposed by the super-carriers.

III. ACCESS TO SPECTRUM

Cricket aspires to become a national carrier, which we believe will allow more consumers to experience affordable and innovative voice and broadband services. In order to achieve that goal, we need more spectrum so that we can offer service in more locales and have enough bandwidth to offer high-speed broadband data services. However, the nation’s largest carriers have acquired the lion’s share of spectrum that the FCC has auctioned in recent years. And – as if that wasn’t enough – they have systematically absorbed dozens of smaller competitors. Two

firms—AT&T and Verizon—now have a majority of market share, both in terms of revenue and subscribers, and four firms account for more than 90% of revenue and subscribers.¹

Cricket and other regional and small carriers, in advance of auctions conducted by the previous administration, urged the FCC to design competitive bidding rules that would result in more spectrum being made available to new entrants. Those efforts were unsuccessful. Instead, the largest carriers advocated for large regional and national spectrum assignments, knowing full well that smaller carriers do not have the same “deep pockets” to bid on large licenses. As we and others predicted, the auctions unfortunately resulted in the largest companies getting larger, with smaller carriers priced out of the bidding for the majority of the spectrum. Mr. Chairman, in your September 2008 letter to the four largest wireless carriers, you articulated your concerns about “consolidation and increased market power by the major carriers,” and referenced the proposed acquisition of Alltel by Verizon Wireless as the latest example.² Those concerns could not be more valid.

IV. AUTOMATIC ROAMING IS ESSENTIAL TO PROMOTE COMPETITION AND PROTECT CONSUMERS

Regardless of their aspirations, new and emerging carriers cannot build a national network overnight, so we need to roam on our competitors’ networks while we build out our own spectrum. However, due in significant part to the spectrum consolidation mentioned above, the nation’s largest carriers now have both the incentive and the ability to foreclose competitors from

¹ See, e.g., *Implementation of Section 6002(b) of the Omnibus Reconciliation Act of 1993*, Thirteenth Report, WT Docket No. 08-27 (rel. Jan. 16, 2009) at Table A-4; P. Cramton, A. Skrzypacz, and R. Wilson, “The 700 MHz Spectrum Auction: An Opportunity to Protect Competition in a Consolidating Industry” (Nov. 13, 2007), at 2.

² The Hon. Herb Kohl. Letter to Lowell McAdam, President & CEO, Verizon Wireless, et al. (Sept. 9, 2008).

entering new markets. Cricket and other small, regional, and rural carriers have increasingly encountered abusive and anti-competitive business practices, such as the largest carriers' refusal to provide wholesale automatic roaming at just, reasonable, and non-discriminatory rates, terms and conditions. Automatic roaming agreements play a critical role in the wireless industry, plugging coverage holes that exist in *every* carrier's network so that consumers can obtain seamless coverage wherever they travel. Without an automatic roaming obligation, for example, there is no guarantee that consumers traveling outside their provider's network will receive emergency alerts sent via text message. Whether seeking help with car trouble—or even contacting family and receiving critical information in the wake of a hurricane or terrorist attack³—consumers “should [not] have to see the words ‘No Service’ on their wireless device” in a time of need.⁴ Consumers simply should not be stranded when they travel away from home.

In 2007, the FCC clarified that automatic roaming is a common carrier service that must be provided on just, reasonable, and non-discriminatory terms and conditions, and found that roaming benefits all wireless subscribers by promoting nationwide, seamless coverage.⁵ Unfortunately, at that time, the FCC allowed an “in-market” exception to that obligation advocated by Verizon and AT&T, which allows a carrier to refuse roaming service in any area where the requesting carrier holds a wireless license or spectrum usage rights.

This loophole effectively guts the rule and defeats many of the public interest benefits that the FCC sought to promote in the first place. The “in-market” exception punishes emerging

³ See *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15817, 15888 (2007) (“*Roaming Order*”), Statement of Commissioner Deborah Taylor Tate (observing that roaming can benefit “public safety, or even homeland security”).

⁴ *Id.*, Statement of Commissioner Jonathan S. Adelstein, Approving in Part, Concurring in Part.

carriers that seek to expand through acquiring new spectrum by depriving them of common carrier roaming rights in their newly licensed areas. Thus, the in-market exception actually runs counter to the FCC's stated goals of "encouraging facilities-based service and supporting consumer expectations of seamless coverage when traveling outside the home area."⁶ It is simply infeasible for a carrier to build and maintain facilities that provide service to 100% of its licensed area—particularly where a carrier holds licenses that cover very large regions, such as the Economic Area ("EA") licenses and Regional Economic Area Grouping ("REAG") licenses sold in Auction 66. Even the largest carriers, including Verizon and AT&T, are nowhere close to building out facilities to cover all of their licensed service areas and must therefore rely on roaming to fill holes in coverage. Furthermore, some spectrum licenses remain encumbered by federal government use, and carriers must work with government entities to clear this spectrum before using it to provide retail service.

Nearly all carriers—large and small, rural and urban, incumbent and competitive—have agreed in connection with pending petitions for reconsideration of the *Roaming Order* that the FCC should close the in-market loophole.⁷ Only Verizon and AT&T support affirmance of the current rule, which is hardly surprising: they clearly have much to gain by protecting their market power, and the in-market exception allows them to extract above-market prices from

⁵ See *Roaming Order*, 22 FCC Rcd at 15827–28 ¶ 26

⁶ *Id.*, 22 FCC Rcd at 15835 ¶ 49.

⁷ Carriers and organizations supporting elimination of the in-market exception include Leap, MetroPCS, Sprint, T-Mobile, United States Cellular Corporation, SpectrumCo (a joint venture that includes cable operators Comcast, Time Warner, and Cox), SouthernLINC, the Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASCO"), and the Rural Telecommunications Group.

other carriers at the expense of consumer welfare, or even to deny roaming outright to the customers of competing carriers.

Verizon and AT&T argue that an automatic roaming obligation without any geographic restrictions would encourage smaller carriers to “free-ride” on carriers that have already invested in facilities construction.⁸ But this argument is belied by the facts. Cricket, for example, has a demonstrated history of aggressively building out its licenses, despite the fact that it has limited resources and capital in comparison to the nation’s largest carriers. Moreover, it is self-serving for these two carriers to argue that Cricket and other small and mid-sized carriers must build facilities reaching every corner of their licensed areas when they themselves still have not built out significant portions of their own networks even though they have had more than 20 years to do so and received their original licenses for free. Other national carriers recognize that automatic roaming is necessary to fill in coverage gaps and agree that the in-market exception does not make sense.⁹ Even with an automatic roaming obligation, carriers still have the incentive to expand their own network while using roaming agreements to supplement service in the interim, just as the largest carriers have historically done.

It is also important to stress that Cricket and other carriers are not asking the FCC to adopt regulations that would prevent carriers from charging competitive rates and reaping a profit from their investments. Instead, Cricket and others merely urge the FCC to reevaluate an ill-considered loophole that effectively allows the largest carriers to adopt anti-competitive practices and stymie the efforts of small, regional, and rural carriers to expand their network and

⁸ *Id.* at ¶ 49.

⁹ *See, e.g.*, Sprint Nextel Corp. Petition for Reconsideration (Oct 1, 2007) at 9–10; T-Mobile USA, Inc., Petition for Partial Reconsideration (Oct. 1, 2007) at 2–3.

offer consumers a competitive alternative. In the end, the in-market exception forces consumers—particularly low-income and underserved consumers—to pay more for less coverage, or in some cases to lose coverage altogether.

The same of course is true for data roaming. A roaming obligation for data services will enhance the ability of small, regional, and rural carriers to enter the data services market and effectively compete against the largest carriers. Such a rule would also promote facilities investment and improve the provision of data services to poor and rural communities caught on the wrong side of the digital divide. Automatic roaming for data services—again, with no “in-market” exceptions—is integral to future wireless competition.

There is no procompetitive justification to explain the largest carriers’ refusal to provide automatic roaming to other carriers on just, reasonable, and nondiscriminatory rates, terms and conditions, and without geographic carveouts. They clearly have adopted these practices in an effort to weaken the service offerings of their competitors—in spite of the fact that they have relied on such agreements to expand their own networks. These anti-competitive practices harm all consumers, but they disproportionately burden disadvantaged and rural populations, many of whom cannot afford or qualify for the wireless services provided by the nation’s largest carriers.

We believe that having a roaming rule that applies nationwide without exception will reduce the ability of the largest carriers to continually price voice and data wholesale roaming services at multiples *above the retail rate* they charge their own customers – the situation that exists today. At a minimum, this state of affairs raises serious questions about whether the wholesale market for roaming services is functioning effectively or competitively.

V. VERIZON-ALLTEL MERGER

The most recent example of the linkage between further consolidation and anticompetitive roaming practices is the recently-consummated merger between Verizon Wireless and Alltel. Cricket was one of the lead opponents of this transaction because we relied on Alltel for approximately 25% of our roaming traffic and feared that if Verizon acquired Alltel, it would impose anticompetitive restrictions on the old Alltel territory. That is precisely what is unfolding.

The FCC ultimately subjected its approval of the merger to several roaming conditions, which Verizon itself proposed, in order to ensure that the merger would not lead to anti-competitive harms.¹⁰ Among other things, the FCC conditioned approval of the transaction on Verizon's commitment to give roaming partners the option of selecting either the Verizon or Alltel agreement to govern the exchange of all roaming traffic with the merged company, and to keep the rates provided in those agreements frozen for at least four years after the consummation of the merger.¹¹

Since the merger, Verizon has attempted to circumvent the limited conditions that the FCC imposed in order to free itself of any restraints on the exercise of its market power. Specifically, Verizon has advanced a reading of those merger conditions that would render meaningless its commitment to honor rates for four years, because Verizon argues it can terminate existing roaming agreements within that time frame and then demand whatever non-rate conditions it chooses.

¹⁰ Atlantis Holdings LLC and Cellco Partnership d/b/a Verizon Wireless, Memorandum Opinion and Order, 23 FCC Rcd 17444, 17525 ¶ 178 (2008) ("*Verizon-ALLTEL Order*").

¹¹ *Id.*

Cricket has asked the FCC to clarify that the four-year commitment applies to all terms of existing roaming agreements—not just the rates. This understanding is consistent with a plain reading of the merger conditions, Verizon’s own statements in filings with the FCC, and indeed, is confirmed by the statements of three Commissioners who voted to approve the merger.¹² Verizon has offered no legitimate policy or other justification to support its reading of the conditions—because there is none. The FCC adopted these conditions to protect consumers from potential abuses of market power and they should be strictly enforced.

I raise the Verizon-Alltel merger proceeding because it demonstrates the importance of adopting regulatory safeguards to prevent the nation’s largest carriers from abusing market power. This transaction is one of many over the past several years that have consolidated the nation’s scarce spectrum assets into the hands of a few, and as a result, these carriers have even greater incentive and ability to adopt anti-competitive practices, including the denial of automatic roaming, which will harm consumers in the long run. It is critically important that Congress and the FCC remain vigilant to ensure that the wireless industry is competitive and that all consumers have access to seamless wireless services at just, reasonable, and non-discriminatory rates.

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Chairman Kohl, I thank you and the Subcommittee again for allowing me to express the views of Leap and Cricket on these important topics.

¹² *Id.*, Statement of Commissioner Deborah Taylor Tate; *id.*, Statement of Commissioner Michael J. Copps, Concurring in Part, Dissenting in Part; *id.*, Statement of Commissioner Jonathan S. Adelstein, Concurring in Part, Dissenting in Part.