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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
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	)	
Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services	)	**WT Docket No. 00-193**
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	)	

COMMENTS OF LEAP WIRELESS INTERNATIONAL, INC.

Leap Wireless International, Inc., an Entrepreneurs' Block PCS provider, hereby offers on behalf of itself and its Cricket subsidiaries (collectively "Leap"), these comments to the Commission's *Notice of Proposed Rulemaking* in the above-referenced docket.[1] Leap opposes any mandatory automatic roaming obligations imposed by the Commission on wireless providers, and urges that the Commission sunset the current manual roaming rule as soon as is practicable.

The Commission is wise to refrain from adopting any automatic roaming rule "unless it is clear that providers' current practices are unreasonably hindering the operation of the market to the detriment of consumers."[2] In fact, the market has functioned efficiently in this area, and there is no reason for regulatory intervention. To the contrary, as described below, regulation would jeopardize the introduction of competitive new services, such as Leap's Cricket service plan, and thereby act to the detriment of the public interest.

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[1] Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services, *Notice of Proposed Rulemaking*, WT Dkt. No. 00-193 (rel. Oct. 4, 2000) ("*Notice*").

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List A B C D E

I. THE STATE OF CMRS COMPETITION RENDERS ROAMING RULES UNNECESSARY

The current state of CMRS competition obviates the need for continued or additional roaming requirements. The wireless marketplace is characterized by multiple carriers competing for the same business: 88 percent of the U.S. population live in areas served by three or more wireless providers, and 69 percent can choose from five or more wireless providers.[3] And these numbers will only continue to increase, as existing licensees continue to build out and expand their coverage, and the Commission continues to make new spectrum available.[4] In this dynamic and competitive marketplace, there is no market failure that requires regulatory intervention.

In addition, recent developments have in particular placed competitive pressure on roaming arrangements. The widespread availability of dual-band and dual-mode handsets dramatically expands the potential universe of competitors for roaming calls.[5] Likewise, technology is now being introduced that will allow the interoperability of two of the three digital

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[2] *Notice* ¶ 18.

[3] Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Radio Services, *Fifth Report*, FCC 00-289 (rel. Aug 18, 2000) ("*Fifth CMRS Report*") at 6.

[4] *See e.g.* Auction of C and F Block Broadband PCS licenses, NextWave Personal Communications, Inc., and NextWave Power Partners, Inc. Petition for Reconsideration, *Order on Reconsideration*, File Nos. 00341CWL96, *et al.* (rel. Sept. 6, 2000). *See also,* Service Rules for 746-764 and 776-794 MHz Bands and Revision to Part 27 of the Commission's Rules, *First Report and Order*, FCC 00-5, WT Docket No. 99-168 (rel. Jan. 6, 2000) (establishing 700 MHz band service).

[5] *See, e.g.*, *Fifth CMRS Report* at 20.

standards.[6] And as PCS carriers build out and fill in the relatively unpopulated interstices of their licensed area, the operators of cellular "roaming traps" along rural highways and interstates are increasingly relieved of their duopoly power.[7]

The Commission has noted that roaming revenue has traditionally been a significant source of income to carriers.[8] And intercarrier competition for roaming dollars has become fierce.[9] For example, one company saw its roaming rates drop by one half during the 18 months between the fourth quarter of 1997 and the first quarter of 1999.[10] There is no reason to believe that carriers would refuse to enter into automatic or manual roaming arrangements with one another except for valid business reasons. If, in an effort to damage a potential competitor, a carrier refuses to enter into a roaming agreement, it would merely cut off its nose to spite its face: the firm seeking a roaming arrangement can almost certainly find another partner, and the carrier that sought to freeze out the other would have foregone significant potential revenue.[11]

In addition to market forces, legal restraints on anticompetitive behavior further obviate the need for FCC imposition of an automatic roaming obligation. Antitrust causes of action could spring from the arbitrary refusal of a monopolist to deal with a potential

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[6] For example, the TDMA-Edge website reports that, "Compatibility between AMPS, TDMA, and GSM, along with the deployment of dual-mode dual-band multiple technology wireless handsets, ensures ubiquitous network access for the subscribers worldwide." Available at: http://www.uwcc.org/edge/tdma_win_technology.html.

[7] *Fifth CMRS Report* at 20.

[8] *See, e.g.*, Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, *Second Report and Order and Third Notice of Proposed Rulemaking*, 11 FCC Rcd. 9462 ¶ 11 (1996).

[9] *See Fifth CMRS Report* at 20.

[10] *Id.*

[11] *Cf., e.g.*, Phillip Areeda and Herbert Hovenkamp, *Antitrust Law* ¶770e, pp. 171-172 (1996) (theorizing that even monopolists "will generally behave rationally and make all

competitor,[12] or from the concerted refusal of a group to sell to a particular competitor.[13] Moreover, the Commission's spectrum cap[14] and other rules, together with its license transfer review process, and the premerger review authority of other governmental agencies, generally prevent any entity from gaining the power to act in an anticompetitive manner.

Just as competition has risen among the increasing number of carriers for roaming dollars, competition has risen for roaming customers. Several carriers now offer "digital one rate" plans specifically targeted to roaming-intensive customers.[15] And customers can and do comparison shop based upon service area.[16] Thus, habitual travelers are able to pick one of the national or regional plans that suits their needs, and they have relatively little need for roaming on any other carrier's system.

Five years ago the Commission predicted that, "market forces should eliminate the need for any explicit roaming regulations once broadband PCS licensees have built out their networks,"[17] and that prediction has come true. Market forces have eliminated the ability of any carrier profitably to refuse to enter into a roaming arrangement on competitive terms. There is no need for roaming regulations at this time.

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profitable sales," and thus that "the danger of 'abuse' through arbitrary refusals to deal seems quite low").

[12] *See, e.g., Aspen Skiing Co. v. Aspen Highlands Skiing Corp.*, 472 U.S. 585 (1985).

[13] *See, e.g., Klor's, Inc. v. Broadway-Hale Stores*, 359 U.S. 207 (1959).

[14] 47 CFR §20.6.

[15] *Fifth CMRS Report* at 10-11.

[16] *See, e.g.*, Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, *Third Report and Order and Memorandum Opinion and Order on Reconsideration*, FCC 00-251, CC Dkt. No. 94-54 (rel. Aug. 28, 2000) at ¶ 5.

[17] *Second Report and Order* ¶ 2.

II. ROAMING REGULATIONS COULD INTERFERE WITH COMPETITIVE NEW SERVICES

Leap, through its Cricket operating subsidiaries, offers an innovative and competitive service plan that is fundamentally incompatible with the imposition of an automatic roaming obligation. Subscribers pay just $29.95 per month for unlimited local airtime – with no roaming. This CMRS service offering has proven wildly popular during the short time and in the limited markets in which it has been available, and Leap is now aggressively expanding into many new markets.

Leap caters to a market segment that the larger players such as AT&T, Sprint and Verizon often overlook. Leap's markets are generally small- to mid-sized metropolitan areas that are regarded within the industry as "secondary markets" with less potential for wireless growth. These markets may have fewer of the business executives and professionals to whom the larger carriers tailor their plans, but the Cricket service plan reaches out to those who do not need, and in many cases could not pay for, the service offerings of the nationally-footprinted super carriers. Approximately 44 percent of Cricket customers work in blue-collar, clerical or service jobs, and for many of these customers Cricket is the *only* service that can meet their needs.

Indeed, in addition to targeting and increasing penetration among traditionally underserved populations, Cricket's service plan offers a realistic alternative to landline telephony. At $29.95 a month, Cricket is priced competitively with local residential rates. The key to Cricket's success in every respect is the simplicity of its offering: It is marketed as "comfortable wireless" to residential customers; its simple billing structure and coverage resembles the local landline service with which competes, and (perhaps most importantly) costs are kept down as overhead is reduced to a bare minimum.

Cricket's pre-paid, flat fee structure eliminates significant billing expenses, and the related back-office expenses associated with billing-related customer inquiries. Likewise, the service area is simple and easy to understand. Cricket handsets come in boxes with a map on the back, graphically depicting the service area. Inside that area, customers can expect to receive service, and outside that area, they cannot. There are no gray areas or asterisks. Cricket has no roaming at all – even among the various Cricket markets.

Like the ultra-simple fee structure, the well-defined and easily understood service area limits eliminate customer confusion, which promotes satisfaction and retention, and saves Leap the expense of fielding customer complaints. Likewise, the inability to roam saves billing costs, and saves the various overhead costs of roaming agreements, from negotiation to implementation. The Cricket plan thus makes wireless services affordable for the mass market.

An obligation to provide roaming service to the customers of other carriers, or to act as an agent for Cricket customers who choose to roam, would be at odds with the Cricket service model and business plan. Leap would be forced to expand and complicate its billing operations, and would therefore be forced to incur and pass on to its customers the costs associated with doing so. Leap's customers – who are promised no extra charges at all – would suddenly find extra roaming charges on their bills. Cricket call centers would likely receive complaints and inquiries about these charges. Likewise, personnel at the point of sale and at the call centers would need to explain and field inquiries about roaming terms, and about the limits of the local calling and roaming areas. The net result would be higher costs to Leap, as well as dissatisfaction and churn among customers.

The Cricket service model deliberately eschews the complications associated with roaming. By so doing, it is able to keep its costs down, and is able to provide an extremely

simple, user-friendly product. Cricket has found this product to be extremely appealing to a large segment of previously underserved consumers in its markets: mass market consumers who are attracted by the low price and simplicity of the Cricket service model. These consumers do not expect or need to travel with their Cricket handsets any more than they would expect or need to travel with their landline phones.

This sort of innovation is precisely the sort envisioned by Congress and by the Commission when they enacted and implemented a fundamentally deregulatory policy towards CMRS. The Commission has specifically noted the detrimental effect that further regulatory mandates could have on the market-based development of services such as Cricket:

> [I]mposing [an automatic roaming] requirement is inconsistent with our general policy of allowing market forces, rather than regulation, to shape the development of wireless services. Similarly, it could be seen as at odds with Congress' goal in adopting the Telecommunications Act of 1996 of creating a "pro-competitive, de-regulatory national policy framework" for the United States Telecommunications Industry.[18]

The market has shown a desire for the Cricket service, a service that does not include roaming capability, and the FCC should not declare that service unlawful. The FCC should not force Leap to offer (and its customers to pay the overhead costs of) roaming to the customers of other carriers. And the FCC should not by regulatory fiat force consumers to buy service with roaming capability – or no service at all.

III. CONCLUSION

There was no need for an automatic roaming rule five years ago,[19] and there is even less need for one today. In fact, heightened competition has obviated the need for *any*

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[18] *Second Report and Order* ¶ 27.

[19] *See Second Report and Order* ¶ 16 ("The record does not present a basis for us to adopt automatic roaming rules").

roaming requirement, including a manual roaming rule, much less a new mandate that carriers provide automatic roaming to each other. Moreover, such a requirement could jeopardize the ability of carriers such as Leap to offer innovative service plans that, by design, do not offer roaming. The Commission should decline to adopt an automatic roaming rule, and should eliminate the manual roaming requirement.

Respectfully Submitted,

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January 5, 2001

CERTIFICATE OF SERVICE

I, William S. Carnell, do hereby certify that on this 5th day of January, 2001, I caused copies of the foregoing Comments of Leap Wireless International to be sent via Hand-Delivery to the following:

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