555 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004-1304
Tel: +1.202.637.2200 Fax: +1.202.637.2201
www.lw.com

LATHAM & WATKINS LLP

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July 30, 2009

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-B204
Washington, DC 20554

Re: Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC ("*Verizon/ALLTEL*"), WT Docket No. 08-95; Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, WT Docket No. 05-265; and Fourteenth Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services; ***EX PARTE***

Dear Ms. Dortch:

Enclosed for filing in the above-referenced proceedings is a copy of a letter from Robert Irving, Senior Vice President and General Counsel of Leap Wireless International, Inc. and Cricket Communications, Inc., to the Honorable Henry A. Waxman, Chairman of the House Energy and Commerce Committee. In that letter, Cricket responds to a roaming proposal that Verizon made in a letter sent to Chairman Waxman and filed in the above-referenced proceedings.

Please contact the undersigned should you have any questions.

Very truly yours,

- /s/ -

James H. Barker

Counsel for Cricket Communications, Inc.

July 29, 2009

The Honorable Henry Waxman
Chairman, House Energy and Commerce Committee
2125 Rayburn House Office Building
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Waxman:

Cricket hereby responds to a letter that Verizon Wireless recently sent to you on the subject of in-market (or "home") roaming.[1] In that letter, Verizon proposes a rule that, in many circumstances, would sunset the requirement to provide in-market automatic roaming after two years. Congress and the Federal Communications Commission should reject Verizon's transparent attempt to forestall more meaningful regulatory reform that is essential to restore effective competition in the wireless industry, and adopt a mandatory automatic roaming obligation that applies without geographic or time restrictions to all voice and data services.

As the New York Times editorial board observed last week, the nation's top four wireless providers have 90 percent of total subscribers, and Verizon and AT&T alone account for 60 percent.[2] To address the increasing in the wireless marketplace, the Commission should ensure that the nation's largest carriers fulfill their common-carrier obligation to provide automatic roaming *in all geographic areas* on just, reasonable, and nondiscriminatory terms. In fact, the entire wireless industry—except for Verizon and AT&T—have allied to support repeal of the FCC's current in-market exclusion.[3]

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[1]Letter from Lowell C. McAdam, President and CEO of Verizon Wireless, to Hon. Henry Waxman, Chairman, dated July 22, 2009.

[2] *See* Editorial, *Who Rules the Mobile Bands?*, N.Y. Times, July 21, 2009, at A22, available at http://www.nytimes.com/2009/07/22/opinion/22wed2.html.

[3] *See, e.g.*, Ex Parte Letter from Coral Wireless d/b/a MobiPCS, Corr Wireless Communications, LLC, Leap Wireless International, Inc., MetroPCS Communications, Inc., NTCA, NTELOS Inc., OPASTCO, Revol Wireless, Rural Cellular Association, Rural Telecommunications Group, Inc., and Southern Communications Services, Inc., d/b/a SouthernLINC Wireless, to Chairman Julias Genachowski, WT Docket No. 05-265 (filed July 28, 2009); Ex Parte Letter from Ad Hoc Public Interest Spectrum Coalition to Marlene H. Dortch (filed Aug. 13, 2008) (Consumer Federation of America, Consumers Union, Free Press, Media Access Project, New America Foundation, Public Knowledge, and U.S. PIRG); Sprint Nextel Petition for Reconsideration, WT Docket No. 05-265

Cricket Communications, Inc.
10307 Pacific Ctr Ct
San Diego, CA 92121
www.mycricket.com

In support of its far more limited proposal, Verizon argues that in-market automatic roaming would somehow disincent carriers from building out their networks, but that argument simply does not withstand scrutiny. The FCC separately imposes build-out requirements on all wireless licenses, and roaming agreements have never discouraged or impeded facilities-based competition. Verizon's own build-out history demonstrates the point—its heavily reliance on roaming agreements did not stop it from building out its own networks. And over its briefer ten-year history, Cricket itself has demonstrated a stellar record of rapidly building out facilities well in advance of the FCC's existing construction requirements.[4] In fact, Cricket's network now covers more than 90 million Americans.

Automatic roaming has been a bedrock practice of the wireless industry since its inception, and incumbent carriers (many of whom, including Verizon, received their original spectrum for free) have always relied upon automatic roaming agreements to ensure seamless customer service while expanding their own network footprints. As shown by the blue and white areas in the attached map (which Verizon provided to the FCC in connection with the Verizon-Alltel merger proceedings), Verizon still had considerable gaps in its own network as recently as last year—even though Verizon and its predecessors had available spectrum and had 25 years to build out the network. In fact, the gaps in Verizon's network were significantly greater before 2008, when it purchased one of its largest roaming partners, Rural Cellular Corporation ("RCC"). Like all other carriers, Verizon had to rely on automatic roaming agreements with Alltel, RCC, and others to provide its subscribers with "nationwide" coverage. Even before it acquired its roaming partner Alltel, however, Verizon had begun to exert its market power by imposing in-market restrictions on roaming agreements in order to stymie entry and growth by mid-sized and rural competitors.

Cricket and other mid-sized and rural carriers play a critical role in the industry by disciplining prices and promoting innovation in technology and services, and an automatic roaming obligation is critical to ensure effective competition in today's marketplace. In-market

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(filed Oct. 1, 2007); T-Mobile USA, Inc. Petition for Reconsideration, WT Docket No. 05-265 (filed Oct. 1, 2007).

[4] Verizon's invocation of facilities-based competition as the basis for depriving other carriers access to common carrier roaming services has never withstood scrutiny, but recent news reports of Verizon's pricing practices demonstrate that its reliance on market incentives and "free riding" to justify anti-competitive geographic carve-outs and enormous disparities in wholesale per-minute rates is utterly disingenuous. Verizon recently announced an agreement to provide TracFone, a prepaid wireless reseller, with wholesale wireless service, reportedly at $0.015–0.02 per minute—many times less than it charges facilities-based competitors for substantially similar wholesale service.[4] *See, e.g.*, Mark Lowenstein, *Is TracFone the New Southwest Airlines of Wireless?*, Fierce Wireless (June 3, 2009), available at http://www.fiercewireless.com/story/tracfone-new-southwest-airlines-wireless/2009-06-03; Phil Cusick et al., *Prepaid Wireless Services: Just Who Is Tracfone Anyway*, Macquarie Research Equities (USA) (June 10, 2009). Thus, in a blatantly discriminatory manner, Verizon offers dramatically discounted wholesale minutes on a nationwide basis, without geographic restriction, to an entity that has constructed *no facilities at all*.

roaming restrictions and other anti-competitive roaming practices harm all consumers, but they disproportionately burden the underserved, disadvantaged, and rural populations that mid-sized and rural carriers serve by limiting service coverage and making service more costly. Such results do not serve the interests of competition or consumers.

In sum, Verizon's current proposal is anything but "fair" and "balance[d]," as it argues. The American public deserves better. In order to promote effective competition for the benefit of all consumers, the Commission should adopt the following two clear and simple rules:

(1) All wireless providers must be given access to reasonable and non-discriminatory automatic roaming, in all geographic areas, without arbitrary and anti-competitive restrictions.

(2) Automatic roaming should encompass *all wireless services*—including mobile broadband and other data services[5]—must be provided on just, reasonable, and non-discriminatory terms.

Any rule that falls short of these basic requirements would only further exacerbate the distortions in the marketplace and stymie efforts of mid-sized and rural carriers to share the benefits of wireless services with all Americans at affordable rates. As always, Cricket stands ready to discuss these issues with you further.

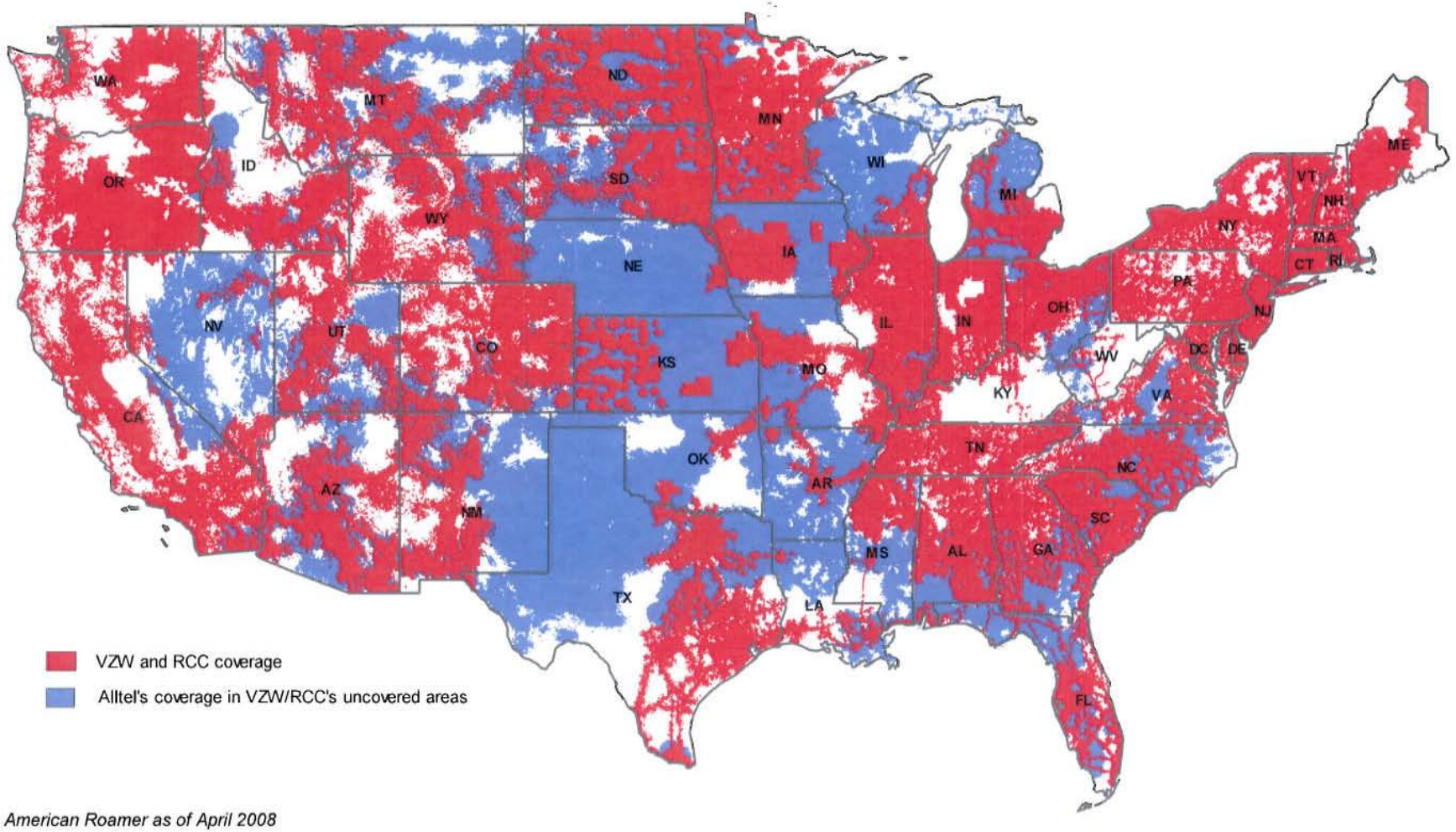
Very truly yours,

Robert J. Irving, Jr.
Senior Vice President and General Counsel
Leap Wireless International, Inc. and
Cricket Communications, Inc.
10307 Pacific Center Court
San Diego, CA 92121

[5] Verizon's letter is noticeably silent on whether its proposed rule would apply to both voice and data services. There is no valid justification for treating these services differently, as Verizon well knows.

VZW/RCC/Alltel Coverage

Exhibit 2



Source: American Roamer as of April 2008

verizonwireless