



February 18, 2011

VIA ELECTRONIC FILING

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

Re: WT Docket No. 05-265; **Ex Parte**

Dear Ms. Dortch:

Cricket Communications, Inc. and Leap Wireless International, Inc. (“Cricket”) share the near-unanimous view of the wireless industry, along with many consumer and public interest organizations, that an automatic data roaming obligation not only benefits consumers, but is essential to preserving and promoting competition, innovation and investment in wireless data services.

Automatic roaming has been a fundamental building block of the wireless industry since its inception. No wireless carrier has constructed facilities in every corner of the United States. Yet, consumers have come to demand and increasingly rely upon the ability to utilize their wireless devices across networks and geographic regions. Thus, all carriers, especially small and mid-sized carriers, must rely upon roaming to meet consumer expectations of seamless nationwide coverage and to effectively compete in the marketplace.

As the Commission has recognized, given consumer expectations for nationwide coverage, roaming is *essential* to preserving and ensuring competition. Facilities-based incumbents enjoy a “head-start” advantage.¹ Automatic roaming thus enables newer entrants the ability to offer a more robust coverage demanded by consumers while deploying their own networks, and in doing so become more vibrant competitors.²

With the rapid adoption of smartphones and other data centric wireless devices, consumers now expect to access their e-mail, the Internet and other mobile broadband services as they travel within in or out of their home service markets. The ability for carriers to compete

¹ *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, Final Rule, WT Docket No. 05-265, 75 Fed. Reg. 22262, 22263-64, ¶ 9 (April 28, 2010).

² *14th Wireless Competition Report*, ¶ 63.

increasingly depends upon securing data roaming agreements to provide seamless nationwide coverage for the data services consumers want.

Historically, Cricket has experienced difficulty in negotiating roaming and particularly data roaming agreements on fair, reasonable and non-discriminatory terms. Cricket owns and operates a 3G digital wireless network³ covering approximately 94 million people in 35 states and relies upon roaming to provide its consumers nationwide coverage. Recently, Cricket was able to obtain a nationwide data roaming agreement for 1X (2G/2.5G) and EvDO Rev A (3G) technologies.⁴ However, despite repeated efforts over the past several months, Cricket has been unable to secure either a 2G or 3G data roaming agreement from one of the national CDMA providers.

Cricket firmly believes that the pendency of proceedings intended to place a basic enforcement framework around an automatic voice roaming obligation, and the ultimate implementation of such a framework, has been tremendously important in disciplining carrier conduct and facilitating the negotiation of roaming agreements that provide seamless coverage for consumers. Given Cricket's past and current experiences in negotiating roaming agreements, Cricket remains concerned that, absent a regulatory framework requiring automatic data roaming on fair, reasonable and non-discriminatory terms, it will be difficult to preserve or negotiate additional data roaming agreements, particularly for 4G.⁵

With 4G technology, voice itself is increasingly becoming a data service and thus it is more critical than ever that the Commission provide a regulatory framework that facilitates the ability for carriers to secure data roaming agreements. Data roaming enables all carriers, especially small and mid-sized carriers, the ability to more effectively compete since providing nationwide seamless coverage for the data services that consumers demand is essential to retaining and attracting a customer base -- which in turn enables carriers to continue their investment in expanding or upgrading wireless network facilities.

Cricket has already demonstrated in these proceedings its commitment to constructing networks and expanding services. Cricket and other mid-sized carriers historically have been investing, on a relative basis, far more capital into the construction of their facilities and the expansion of their networks than the national carriers.⁶ That trend continued in 2010: in the

³ Cricket's 3G digital wireless network operates on CDMA2000 1X and 1X EvDO Rev A technology using PCS/1900MHz and AWS/1700-2100 MHz spectrum. Further, Cricket sells devices capable of working on other operators CDMA networks using Cellular/800 MHz, PCS/1900 MHz or AWS/1700-2100 MHz spectrum.

⁴ In addition, Cricket has several regional 1X (2G/2.5G) and EvDO (3G) data roaming agreements. However, some of these agreements contain terms that are not commercially reasonable and thus are not being currently utilized by Cricket.

⁵ Cricket is currently conducting non-customer facing trials of 4G LTE technology and expects to begin a gradual roll-out of 4G in selected markets over the next several years, beginning in late 2011. Currently, Cricket has no 4G roaming agreements.

⁶ See, e.g., Cricket *Ex Parte* Letter, WT Docket No. 05-265 (Dec. 11, 2009).

first, second and third quarters of 2010, Cricket invested 17% of its service revenue on capital expenditures versus a 14% industry average of the largest four national carriers.

The critical point is that such expansion has taken place -- and can only take place -- in tandem with the maintenance of continued continuity of service to subscribers through the use of roaming agreements to fill holes in coverage. An automatic data roaming obligation will not decrease the incentives for facilities-based carriers to invest in their networks. However, the absence of data roaming will. And more importantly, the absence of data roaming could in the long term affect the very survival of competition in the wireless industry -- competition that is strengthened and enhanced through the presence of small and mid-sized carriers. As evidence of this point, many of the publicly traded wireless carriers struggling to grow and compete in the industry have warned investors and shareholders in their securities filings that the inability to procure voice and data roaming services on a cost-effective basis could have a material adverse effect on their businesses.⁷ This is not advocacy. It is the business reality of a wireless marketplace that has become imbalanced by the continued consolidation of the nation's very largest carriers, at least with respect to the wholesale provision of voice and data roaming services.

Cricket urges the Commission to promptly require that data roaming be made available to all carriers on fair, reasonable and non-discriminatory terms and in doing so ensure a more vibrant competitive wireless marketplace for the benefit of consumers.

Sincerely,

/s/

Robert J. Irving, Jr.
Senior Vice President and General Counsel

cc: Ruth Milkman, Chief, Wireless Telecommunications Bureau (*via e-mail*)
James Schlichting, Senior Deputy Chief, Wireless Telecommunications Bureau (*via e-mail*)

⁷ See, e.g., Form 10-K of Leap Wireless International, Inc. (March 3, 2010) (roaming risk factor); Form 10-K of MetroPCS Communications Inc. (March 1, 2010) (roaming risk factor); Form 10-K of NTELOS Holdings Corp. (Feb. 26 2010) (roaming risk factor); US Cellular 2009 Annual Report (roaming risk factor).