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September 27, 2013

Via ECFS

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

Re: *Applications of Cricket License Company, LLC, et al., Leap Wireless International, Inc. an AT&T Inc. for Consent to Transfer Control of Authorizations*, WT Docket 13-193
REDACTED VERSION – FOR PUBLIC INSPECTION

Dear Ms. Dortch:

Youghiogheny Communications, LLC ("YC"), by its undersigned attorney, is submitting the enclosed REDACTED version of its Petition to Deny for filing in the above-reference docket. The full un-redacted version of YC's Petition to Deny is being filed by hand delivery under separate cover. Two copies of the un-redacted Petition to Deny are also being delivered to Brigid Calamis of the Wireless Telecommunications Bureau.

Should you have any questions, please contact the undersigned.

Sincerely,

/s/ Donald J. Evans

Counsel for Youghiogheny Communications, LLC

Enclosure

REDACTED - FOR PUBLIC INSPECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Applications of Cricket License Company, LLC,	)	
et al., Leap Wireless International, Inc. and	)	WT Docket No. 13-193
AT&T Inc. for Consent to Transfer Control of	)	
Authorizations	)	
	)	
Application of Cricket License Company, LLC	)	
and Leap Licenseco Inc. for Consent to	)	
Assignment of Authorization	)	

To: Chief, Wireless Telecommunications Bureau

PETITION TO DENY

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IAE REPORT

REDACTED - FOR PUBLIC INSPECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Applications of Cricket License Company, LLC, *et al*., Leap Wireless International, Inc. and AT&T Inc. for Consent to Transfer Control of Authorizations	)	WT Docket No. 13-193
	)	
Application of Cricket License Company, LLC and Leap Licenseco Inc. for Consent to Assignment of Authorization	)	

To: Chief, Wireless Telecommunications Bureau

PETITION TO DENY

Youghiogheny Communications, LLC ("YC") hereby petitions the Commission to deny the applications included in the above captioned Docket.[1] YC and its principals are situated in the region of southern Texas that is currently served by both Leap Wireless International, Inc. ("Leap") through its Cricket operating subsidiary and by AT&T. It is notable that YC and its principals competed head to head with Cricket between 2005-2010, operating a similar flat rate CDMA network in five south Texas BTAs. They have first hand operational knowledge of what competition means. In addition, they have intimate knowledge of specific details pertaining to south Texas markets and have first-hand knowledge of the competitive dynamics related to these specific markets, some of which may be applicable on a nationwide basis and/or in specific

[1] The lead application is 0005860676.

markets. As will be explained in detail below, the proposed acquisition by AT&T of Leap's spectrum and operations will have a severely deleterious effect on competition and will otherwise have serious adverse effects on the wireless marketplace. These effects will be experienced nationally, but they will be felt most intensely in the south Texas region where the extraordinary concentration of spectrum and market share in the hands of AT&T and the dearth of other effective competition would leave consumers and businesses like YC in an AT&T stranglehold and cripple the ability of other carriers to compete.

YC will show that the proposed transaction is contrary to the public interest in these respects:

1. The transaction will violate the current spectrum screen, according to the Applicants' own calculations, in "only" 38 CMAs covering "only" 7 million people. The loss of a key competitor by 7 million people cannot be waved away so blithely. The spectrum screen threshold is exceeded by an especially wide margin in the south Texas region noted above. The screen is violated even more grievously when we adjust for the complete absence of actual BRS service in the vast majority of the counties in south Texas that AT&T proposes to acquire. The correct screen trigger should be 132 MHz, and the proposal exceeds that level by as little as 4 MHz and an as much as 48 MHz across this region.

2. The proposed transaction would give AT&T an excessive market share in many markets, especially in south Texas, [Begin Redacted Info] [redacted] [End Redacted Info]

3. While the Commission is considering imposing a hard spectrum cap in WT Docket No. 12-269, it should act decisively to prevent a "land grab" by the largest carriers who are

seeking to fatten their larders before the Commission slams the door on further spectrum hoarding. Unless the Commission impedes this rush to accumulate spectrum before hard caps are imposed, the policy decision on how much spectrum is too much will have been effectively pre-empted by the majors. In the instant situation, the Commission should defer action on the application until a decision is made in Docket 12-269 or, at a minimum, it should condition any new AT&T spectrum acquisition on the outcome of that Docket.

4. Despite its protestations to the contrary here, Leap has consistently held itself out to the Commission, investors, the Securities and Exchange Commission, and the public as a true national carrier, both by its facilities-based operations and its MVNO capabilities. There can be no doubt that the loss of Leap would leave a significant hole in both the national and the local market for prepaid and less costly wireless services.

5. Leap provides true price competition to AT&T and serves as an alternative service option for consumers. AT&T's Aio service offering, while downplayed in the Public Interest Exhibit, is a direct response to the competitive pressure from Leap and carriers like it. AT&T is simply trying to eliminate a competitive threat by this acquisition. If this transaction is approved, Leap's existing prepaid customers will be driven from the price and service niche in which they feel comfortable.

6. Leap has roaming agreements with other CDMA carriers at rates which are much more favorable than those offered by the other major national CDMA carriers. Because its CDMA operations will be phased out, roaming partners and consumers who have heretofore been able to roam on Cricket's network will have to pay significantly higher prices for roaming access.

7. Cricket's approximately 5 million prepaid customers, who are the entirety of its customer base, will have difficulty transitioning to the AT&T system.

8. The improvements in efficiency which the applicants claim would result from the acquisition are simply claims in support of the efficiency of monopoly telecommunications but without the concomitant regulation. The cost savings ATT claims will result from the consolidation do not take into account the need to supply Cricket customers with new handsets. In addition, it ignores the significant cost of eliminating Huawei network equipment in the major markets of Chicago and central/south Texas where ATT will have to rip out an entire network in order to replace it with a substitute CDMA network until the CDMA system is sunsetted.

9. Unless the Commission adopts interoperability requirements, the acquisition will significantly cripple the ability of other carriers to compete. The interoperability "deal" recently announced by the Commission does not go nearly far enough to ensure that interoperability issues do not adversely affect competing carriers and consumers.

10. Many of the economic declarations made by Dr. Israel are based on a self-admittedly incomplete review, are inconsistent with the actual functioning of the wireless communications market, are logically flawed, or are contrary to well recognized economic principles.

11. On a macro level, the FCC should use this application as an opportunity to re-evaluate its methodology for reviewing major transactions. By compartmentalizing each transaction into a narrow field of inquiry, the Commission is failing to appreciate the overall effect on competition and the broader effects of consolidation which have incrementally over the last decade drastically changed the landscape of the wireless industry in this country.

In analyzing whether this proposed transfer of control is in the public interest, we have reviewed and been guided by the Bureau's recent decision approving AT&T's acquisition of licenses held by Atlantic Tele-Network, Inc. As will be discussed in Section IX below, the instant proposal not only poses far more direct and significant dangers to competition than the ATN transaction, but also fails to offer virtually any of the public interest benefits which the Bureau perceived there.

I. **Transgression of the Spectrum Screen**

The Applicants somewhat cavalierly dismiss the significance of the spectrum screen in a few paragraphs of the Public Interest Exhibit. (pp. 34-36). They acknowledge that transgression of the limits set by the spectrum screen raises a red flag requiring further scrutiny of a proposed transaction. They also acknowledge that the screen threshold is exceeded in "only" 38 CMAs -- more than 10% of the CMAs involved in the transaction ! -- and that the population affected is "only" 7 million people. We do not believe that 7 million people in an area covering thousands of square miles should be dismissed so lightly. Moreover, as will be discussed below, the spectrum concentration is especially severe in the south Texas region that YC is most familiar with.

The Applicants deal with this serious spectrum screen problem by pointing to a single paragraph in Dr. Mark Israel's declaration. (Israel Declaration at Para. 46) There Dr. Israel opines that the 38 CMAs where the screen is transgressed "generally are areas where concerns about spectrum aggregation are most obviously without basis, as they are less populous areas where wireless networks tend to experience fewer capacity constraints and thus where entry and expansion are not generally constrained by lack of adequate capacity to carry additional wireless

traffic." Dr. Israel (i) fails to say anything about the transgressed markets that do not fall into the "general" category, (ii) does not explain how "entry" by a new competing carrier is possible without access to spectrum already held by others, and (iii) does not explain why CMAs outside the top 100 are less deserving of access to competitive, fairly priced wireless products than big CMAs. Again, the attitude is simply to sweep the spectrum aggregation presented by this deal under the rug rather than addressing it forthrightly.

YC believes the spectrum aggregation presented here is so severe as to undercut any argument that the transaction is in the public interest. We need only observe the following:

a. In south Texas, the combination which would result from this deal creates a regional spectrum concentration on a magnitude which we believe the Commission has never before approved. From San Antonio south, the combined AT&T operation would have from as little as 140 MHz of spectrum in San Antonio to as much as 170 MHz in Corpus Christi and 180 MHz in McAllen and Brownsville. (See attached Exhibit A) South Texas happens to be a region where both AT&T and Leap each have significant spectrum holdings right now, and this combination pushes the aggregation level well over the brink. The spectrum screen should therefore be sounding clarion alarms that this concentration is harmful.

b. The applicants use the spectrum screen threshold of 151 MHz for this transaction based on the availability of Broadband Radio Service spectrum in the market. This is not the appropriate value since in only three of the south Texas markets examined by YC was BRS service actually available to any real consumer. (See Exhibit A) The Commission has indicated that BRS spectrum will be included in the spectrum screen denominator where it is "available." This spectrum is generally deemed available if it has been transitioned to the band plan adopted by the Commission in 2004. "Under these circumstances, we are including BRS spectrum in a

market-specific spectrum screen in those markets where the transition has been completed." *In the Matter of Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC*, 23 FCC Rcd 17444 (2008) at Para. 65 ("*Verizon ALLTEL Order*"). However, the Commission assumed in the *Verizon-ALLTEL Order* that all BRS stations would be constructed *and operating* as of May, 2011, as required by the BRS rules. *Id.* Thus, unlike traditional cellular, PCS, AWS and other spectrum bands that are automatically deemed available for immediate use, the Commission -- correctly -- imposed a threshold criterion of operational status on whether or not to include BRS in the spectrum screen calculation. Having decided to include or not include BRS based on its operational availability, the Commission should give that criterion some teeth by applying it rigorously here.

The reality is that no consumer in the counties in south Texas identified in Exhibit A can subscribe to BRS service since it is deemed by Clearwire not to be within its reliable service area. (Clearwire is the primary licensee or lessee of BRS spectrum in the markets examined, per the Commission's Spectrum Dashboard.) Accordingly, despite the fact that BRS spectrum has been duly "transitioned" for some time in these markets, the spectrum is not available to consumers for mobile broadband service, and should therefore not be considered "operating." Given the concededly transitional nature of BRS service, a reasoned application of the spectrum screen methodology adopted by the Commission would set the spectrum screen threshold at 132 MHz for all of the south Texas counties examined except Comal, Bexar, Nueces, and San Patricio counties. Instead of exceeding the screen level by only a few MHz, AT&T would exceed it by as much as 48 MHz if this deal goes through.

YC recognizes that as recently as last week, the Wireless Bureau declined to drop BRS from its spectrum screen equation in geographic areas where no BRS service is commercially

available.[2] The Bureau's rationale there was that BRS is considered "available" because the BRS spectrum was transitioned back in 2007. The Bureau did not address the Commission's assumption in the *Verizon-ALLTEL Order* that transitioned BRS spectrum was not only transitioned but operating. *Verizon-ALLTEL Order* at Para. 65. Especially in the context of an analytical framework in which the Commission is trying to evaluate the real effects of spectrum concentration on real consumers, it makes no sense to conduct the evaluation based on a premise that we all know to be false: that a BRS system is available and operating in the market. In fact, given the length of time from the filing of transition notices, it is not certain that any BRS system is even present in these markets, much less available for operations. Moreover, the fact that a BRS system may have met the minimal requirements for serving some portion of the GSA tells us nothing about whether there ever was or will be service available in the counties of interest here. Accordingly, we continue to believe that both the intent of the *Verizon-ALLTEL Order* when it envisioned "operating" BRS systems as a prerequisite of availability and plain common sense require that the BRS service not be deemed "available" when it is not, in fact available.

II. **Any Commission Action Here Should Be Subject to a Hearing or Conditioned on the Outcome of Docket 12-269**

In WT Docket No. 12-269, the Commission is taking a much needed look at the advisability of adopting hard spectrum caps for the mobile communications industry. This approach would follow the well-travelled and somewhat successful path adopted for the broadcast media. Because broadcast radio and television and daily newspapers have been and

[2] In the Matter of Applications of AT&T, Inc. and Atlantic TeleNetwork, Inc. for Consent to Transfer Control of and Assign Licenses and Authorizations, DA 13-1940, Memorandum Opinion and Order, rel. Sept. 20, 2013. ("ATN Order")

remain people's chief sources of news and information, the Commission rightly recognizes that undue concentration of ownership would so limit access to crucial sources of information and so choke the market for advertising that there must be hard limits on how many stations or newspapers any single entity can accumulate nationally or in a single market. With broadband access becoming a critical path to news, information, commerce, social activity, voice and text communications and much else in daily life, it is high time the Commission began similarly limiting by rule the degree of concentration permitted.

Unfortunately, in Docket 12-269, the Commission noted that any limits it might adopt there would be prospective only.[3] This offhand comment has triggered a land rush by the major carriers, including AT&T, to acquire as much spectrum as they possibly can now in the comfort that any caps imposed later would not apply to them. It's like the huge surge of purchases of assault rifles that occurred when there was wide-spread post-Sandy Hook concern that such weapons would become banned. By the time the Commission gets around to finalizing its Docket 12-269 inquiry, the spectrum concentration will have already become so skewed that the rule adopted there will have lost its effectiveness. If anything, it might even be *counterproductive* since it might deter new competitors from emerging because they would have no hope of ever matching AT&T and Verizon's hoards of spectrum. In effect, the Commission's regulatory tool will have been rendered impotent because all of the evils which the new rule is to prevent will have been grandfathered into perpetuity.

There is a simple solution to that problem. In evaluating transactions like this one which involve millions of MHz/pops of spectrum across the United States and the loss of a significant national competitor, the Commission should forthrightly recognize that there are real questions

[3] FCC 12-119, Notice of Proposed Rulemaking at Para. 49

pending about how much spectrum is too much. Rather than simply letting these transactions go through because the Docket 12-269 is not yet complete, the Commission should either (i) hold a hearing to consider the issue or (ii) condition any approval of the transaction on the outcome of Docket 12-269. The condition would ensure that any remedy ultimately adopted in that Docket is not nullified at the outset by all the deals that have already been approved while the Docket is pending.

Indeed, a hearing under Section 309(e) of the Act is likely required under the circumstances presented here. The Commission has already indicated in Docket 12-269 that it is uncertain about whether spectrum limits should be imposed. Given the size and scope of the acquisition involved here, there must be a substantial and material question as to whether this transaction is in the public interest. And given that uncertainty, if the Commission does not deny the application outright, the Commission would have to hold a hearing to discharge its public interest obligations,[4] just as it did in the T-Mobile-AT&T situation. [5]

A third alternative would be to simply defer action on the instant proposal until Docket 12-269 is resolved. The Docket is surely nearing completion in the next few months. Rather than allowing a deal to go through which would be presumptively contrary to the public interest and have long-lasting pernicious effects, the Commission should have the patience to decide once and for all how much spectrum is too much and then apply that rule to this deal.

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[4] "If ..a substantial and material question of fact is presented or the Commission for any reason is unable to make the finding specified in this subsection, it shall formally designate the application for hearing..." 47 USC Section 310(e).

[5] Bureau Staff Analysis, Draft Designation Order in Docket 11-65.

III. **The Proposed Transaction Would Adversely Affect the Roaming Market**

In recent years the Commission has learned in a variety of forums (rulemakings, Congressional hearings, and various large transactions) that smaller and even larger regional carriers have been unable to reach reasonable roaming agreements with the two major carriers. Numerous small carriers and their associations have petitioned the Commission to impose conditions on acquisitions by the major carriers in an effort to remedy the lack of roaming access. ATN in connection with its sale to AT&T cited the high cost of roaming as a ground for throwing in the towel as an independent carrier.[6] And even Leap and T-Mobile (prior to their respective agreements to sell out to AT&T) loudly decried the same persistent problem.[7]

The difficulty, in a nutshell, is that as the two major carriers have achieved near ubiquity of footprint nationwide, they have lost any incentive whatsoever to negotiate fair or reasonable roaming rates. The Commission's current regulatory approach for roaming is founded on the industry model that prevailed in the last century when the cellular market was characterized by numerous independent players operating in limited regions. Under that model, it is in every carrier's interest to negotiate reasonable reciprocal roaming rates with other carriers because each carrier would need its own customers to be able to roam when they are not on a home network. Those days are long past.

Now the two majors offer roaming only because it is an FCC requirement; while they do need roaming in some rural areas, they generally have some coverage of their own in all large and mid-size markets. They are therefore economically incentivized to offer roaming on rates and conditions that are higher than most competing carriers can feasibly agree to pay. The

[6] Public Interest Exhibit at pp. 11,12,22 et ff.
[7] See attached IAE Report at p.6-7.

majors meet the letter of the FCC roaming regulation by offering a roaming rate, but not one which any other carrier can realistically afford to pay. And in the current marketplace, it is a practical impossibility for a carrier to attempt to pass through domestic roaming charges to its customers. It is therefore the same as having no roaming access on the two majors at all. The upshot is that smaller carriers must have roaming partners other than the majors in order to be able to offer their customers any chance at all of roaming outside their home markets.

The urgent problem is that as the two majors swallow up not only smaller localized carriers but even Tier 2 carriers like Allied, MetroPCS, Midwest Wireless, and now Cricket, the alternatives for other carriers have become alarmingly few. Pending wide-scale conversion to LTE operations, CDMA carriers can only roam on the networks of other CDMA carriers. For the reasons set forth above, Verizon Wireless (by far the largest CDMA carrier) is a prohibitively high cost roaming partner, so almost any alternative is preferable. Sprint should be an option as a CDMA carrier, but its coverage and service in the past have been spotty, thin, and unreliable. While that may someday change under Sprint's new ownership, right now and for the foreseeable future it remains an unattractive source of service for roaming customers. Moreover, it is unclear how long Sprint will remain a CDMA carrier. Three of the largest other CDMA options have either already been acquired by T-Mobile (MetroPCS), Verizon (Allied Wireless) or are now being acquired by AT&T (remnants of Allied Wireless and Cricket). These large acquisitions follow on the earlier acquisitions of numerous other large regional carriers such as Midwest Wireless (which was an important CDMA presence in rural areas). The cast of potential large CDMA roaming partners has been reduced from over a dozen to just a handful and getting smaller all the time. Cricket has been a reliably low cost or even bill and keep CDMA roaming partner with relatively large, though clearly not ubiquitous, coverage. See, for example, Exhibit

J where MetroPCS and Cricket announced a national roaming arrangement. If Cricket is allowed to pass over into AT&T's GSM family, smaller carriers will be left with virtually no reasonably priced roaming to offer their customers.[8] Not only is this a disservice to customers, but it also serves as a huge competitive advantage to the two majors.

In a classic anti-trust dynamic, the two largest carriers have been able to use their sheer size and stranglehold on roaming to further squeeze the life out of smaller carriers. As the attached IAE Report attests, the two majors first weaken competing carriers to the point of non-viability, then use that weakness as a justification for buying them up. The consolidation has now become so concentrated that the Commission can no longer turn a blind eye to the effect on competition generally and to the roaming market in particular.

The Commission has repeatedly refused in the past to impose roaming conditions on major acquisitions despite the entreaties of small carriers and their associations. In the SpectrumCo situation, the Commission did acknowledge that the acquisition by Verizon of huge spectrum resources would pose a significant risk to competition because of the lack of roaming incentives for Verizon Wireless.[9] Yet the remedial condition the Commission imposed there was simply to require Verizon to comply for at least two years with the data roaming rules that it had already adopted. This turned out to be a wholly ineffective remedy since it simply resulted in Verizon Wireless having to obey the rules that applied to everyone, something which the objectors had demonstrated was ineffective in compelling it to agree to reasonable roaming rates

[8] Because roaming rates are generally subject to non-disclosure agreements, the rates offered by Cricket as opposed to those offered by AT&T or Verizon Wireless cannot be disclosed. The Commission should require the submission of this information to verify that approval of this transaction will result in the exit from the roaming market of much lower cost roaming source for CDMA carriers and their customers.

[9] In the Matter of Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCO LLC and Cox TMI, LLC for Consent to Assign AWS-1 Licenses, Memorandum Opinion and Order and Declaratory Ruling, FCC 12-95, rel. August 23, 2012. ("SpectrumCo Order")

and terms. To truly remediate the crisis that would be caused in the CDMA roaming environment by this acquisition, the Commission would need to impose conditions that (i) require that roaming be provided on terms similar to those currently offered by Cricket to its roaming partners for as long as the Cricket network continues to operate as a CDMA network but in any case not less than five years, and (ii) require AT&T to offer LTE roaming on comparable terms when the CDMA network goes down. The five year minimum is intended to ensure that customers and other carriers are not stranded by the lack of a CDMA roaming partner until there is broad scale transition to LTE. These conditions are targeted narrowly and specifically at the significant damage to the roaming market which would otherwise be occasioned by this deal. Given the significant cost savings and efficiencies that the applicants point to to justify this transaction, there is certainly no reason why Cricket's roaming rate should go up; if anything, it should go down. Absent those conditions, this transaction should not be allowed at all.

IV. **The South Texas Market**

YC is especially familiar with the south Texas market since its principals once owned a controlling interest in Pocket Communications, which was subsequently acquired by Leap.[10] Pocket Communications focused on that region and was a very successful challenger to the dominance of the Big Two which prevails elsewhere in the U. S. [Begin redacted material] [redacted] [End redacted AT&T material] The pre-transaction and post-transaction market shares in the south Texas area have been set forth in Appendix B of the IAE Report. While the applicants assert that "Leap generally

[10] YC continues to hold a minority, non-controlling interest in Pocket.

has only a modest presence even in the areas where it does offer facilities-based service"[11], this is clearly not the case in south Texas.

[Begin Redacted AT&T Material] [redacted] [End redacted material]

To make matters worse, Cricket is especially dominant in the prepaid segment. [Begin redacted info] [redacted] [End redacted info] If this transaction is approved, AT&T will immediately assume the dominant position in the prepaid submarket in this region.

[11] Public Interest Statement at p.32

Pocket Communications was an extremely strong competitor against the majors and against Cricket while it operated independently in south Texas. For over three years, San Antonio/south Texas was the only Top 20 Market in the entire US where two flat rate providers competed head to head and, indeed, their direct competition resulted in a price war that drove the cost of prepaid service for consumers to nationally low levels ($10 below anywhere else in the country). The attached Exhibit C shows dramatically the effect of competition: in all of its other markets in the United States, Cricket charged at least $40 for the package of basic features identified with the arrow. But in the south Texas area where Cricket faced competition from another low cost carrier (Pocket), it dropped its price for the same features to $30.[12] This was a full 25% bow to competitive pressure. Immediately after Cricket bought Pocket Communications, Cricket's rates (predictably) went up. (See Exs. D-1 and D-2)

In addition to pricing, competitive pressure from Pocket also caused Cricket to change its business model in a number of other ways, most notably building a much larger local coverage area than their original business model called for (a strategy subsequently rolled out to other markets). At the time of this writing, Cricket's voice, 3G, and 4G coverage areas in south Texas are at least as good as, if not better than, ATT, but also Sprint, and T-Mobile (see Exhibit I). This underscores the principle, which should be intuitively obvious, that if you have more than one serious provider of a particular offering premised on low cost as well as coverage, competitive forces will drive prices lower, service will improve, and the public will benefit. This also demonstrates conclusively that national carriers do indeed respond to price pressure in local or regional competitive circumstances, despite the Commission's consistent belief that this does not happen.

[12] Chart prepared in 2007 based on Cricket's competitive offerings at that time

Putting aside for the moment the issue of whether Cricket is a competitor against AT&T's post-paid plans, there is no question that AT&T's nascent Aio offering was intended to compete directly in the prepaid market. One would therefore expect competitive considerations to drive the prices of both carriers lower, just as prices dropped in south Texas. Instead, assuming AT&T keeps Aio in existence at all,[13] Aio and Cricket will be sister companies for whom it would be irrational to engage in a price war that would reduce both of their profit margins. The move by AT&T to buy Cricket makes perfect sense since it will have eliminated the competitive force that prompted Aio in the first place. As Mr. Stephenson conceded, "[w]here the company is exposed is at the price-sensitive end of the market... That's one of the reasons we are doing the Cricket deal." Ex. E. It is simply absurd for the Applicants to insist here that they do not compete with each other in this sphere.

But as explained by IAE in its Report, there is also no question that Cricket and AT&T do compete with each other even on the larger post-paid/prepaid battleground. Again, the IAE Report explains the dynamic from an economics 101 perspective, but in a practical sense a consumer with a limited budget must have a choice between a high-priced carrier that she can't afford and lower cost one that she can. The availability of a choice across a range of service offerings and price points is what competition is really all about. And while AT&T and Cricket insist that they are not in competition, this is belied by Cricket's own marketing campaigns. See, for example, the Cricket billboard now displayed in the San Antonio area (Exhibit F) which directly targets AT&T and Verizon: "PLANS FOR HALF THE PRICE OF AT&T AND VERIZON" This theme is repeated on Cricket's web page. See Exhibit G. Cricket very

[13] AT&T's precise plans are somewhat unclear from the materials filed to date. The Commission should demand clarification as to what its plans are for this direct competitor to Cricket. AT&T's CEO recently indicated that Cricket will be AT&T's low cost brand, seemingly abandoning the Aio brand. See Exhibit E.

deliberately and understandably postures itself as a lower cost alternative to AT&T and Verizon and seeks customers on that basis. Yet here it is posturing itself as not competitive with them.

Cricket's rate plans currently include offerings which are substantially lower than the offerings of the other national carriers. (See Current Rate Comparison on Cricket website Ex. H.) Cricket is therefore an excellent option for a lower income consumer who cannot afford an AT&T (or other national carrier's) post-paid plan. Clearly, even if AT&T retains Cricket as a brand on a long term basis, it will not engage in vigorous price competition with itself, and the public will have lost an important service and price choice.

While YC happens to be especially familiar with the market dynamics and history in south Texas, it appears that there are other clusters where the AT&T-Leap combination will also pose significant market concentration and spectrum consolidation issues. YC therefore urges the Commission to conduct a thorough investigation of the full gamut of suspect markets to determine whether this transaction will harm other markets as dramatically as it will hurt south Texas. Without a doubt, AT&T's acquisition of Leap will remove from the nationwide market a disruptive competitor which necessarily imposes some degree of cost discipline on the majors. While AT&T proposes to maintain the Cricket brand, it obviously will not compete as aggressively against itself as an independent carrier would. Approval of this transaction will therefore diminish competition and result in higher prices for consumers.

V. **The Proposed Transaction is Harmful to Competition Nationwide**

Despite Applicants' claims otherwise, Leap is a competitor to AT&T in the national wireless marketplace. Indeed, Leap has touted itself as a national provider and listed AT&T as one of its competitors. Similarly, AT&T has also identified Leap as a significant nationwide

competitor which serves as a constraint on pricing and other decisions of the major carriers, including AT&T. As such, the proposed transaction would eliminate an important nationwide competitor, to the detriment of consumers.

Applicants derogate Leap as a national competitor because it is not a nationwide *facilities-based* provider; rather, Leap provides service using a mix of its own facilities, wholesale agreements, and roaming agreements. But the fact of the matter is that Leap's service, according to its filings at the Securities and Exchange Commission, is "offered in 48 states and the District of Columbia across an extended area covering approximately 292 million POPs."[14] That Leap is not facilities-based across the U.S. is irrelevant because, despite this fact, the company's service is still available as an alternative to the major carriers, including AT&T, on a national level. In other (and its own) words, Leap "compete[s] with national facilities-based wireless providers and their prepaid affiliates or brands."[15]

Moreover, prior to the proposed transaction, Leap gave no indication that it intended to cease offering its services or competing nationwide. In fact, in its 2012 transaction with Verizon Wireless, from which it acquired 700 MHz spectrum in the Chicago area, Leap refuted allegations that it would exit as a service provider in many markets and be eliminated as a competitor.[16] Leap represented that deployment of LTE using the 700 MHz was a key competitive goal, and that the transaction would help "fund the deployment of LTE across its coverage areas and become a stronger competitor as an overall matter."[17] In sharp contrast to its tone in the instant proceeding, Leap even flaunted its competitive prowess: "Indeed, as the

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[14] Leap Wireless Form 10-Q for the Quarter Ended June 30, 2013 at 31 (available at http://www.sec.gov/Archives/edgar/data/1065049/000106504913000011/leap-june2013q2x10q.htm, last accessed September 19, 2013); s*ee also* IAE Report at Section 1.2.
[15] *Id.*
[16] *See* ULS File No. 0004952444, Joint Opposition to Petitions to Deny at 10 (filed March 2, 2012).
[17] *Id.* at 11.

Commission – and RTG – well know, Cricket has been a disruptive and innovative competitive force in the wireless industry for many years, offering industry-altering products and services."[18]

Leap's plans to continue competing on a nationwide basis were also evident from representations made to investors earlier this year that the company had: (1) entered into roaming relationships that enable it to continue offering its Cricket customers nationwide voice and data roaming services over an extended service area; (2) entered into an agreement with a national carrier for 4G LTE roaming services; (3) entered into a wholesale agreement used to offer services in nationwide retailers outside its network footprint; and (4) amended that wholesale agreement so its customers would also receive 4G LTE services.[19] Accordingly, Leap continues to represent itself publicly to consumers as a nationwide competitor: "Today Cricket is a nationwide carrier with a nationwide footprint, serving approximately 5.5 million customers across the United States."[20] Leap's products are offered at Walmart and Radio Shack, and until this year were also offered at big box stores like Target and Best Buy, right along with the other national carriers. Clearly, national retail distribution on this order would rank it as a national brand.

Applicants insincerely assert that Leap's lack of a nationwide network footprint and comparatively small subscriber base mean its operations are not significant enough to influence the competitive decision-making of the facilities-based national carriers. This is merely an assertion of convenience as AT&T previously asserted and presented evidence to the contrary as

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[18] *Id.*

[19] Leap Wireless Form 10-K for the fiscal year ended December 31, 2012 at 36 (available at http://www.sec.gov/Archives/edgar/data/1065049/000106504913000003/leap-dec2012q4x10k.htm, last accessed September 19, 2013).

[20] http://www.leapwireless.com/who-we-are/best-prepaid-wireless, last accessed September 19, 2013.

justification for its proposed acquisition of T-Mobile.[21] Specifically, AT&T referred to Leap as a nationwide service provider,[22] an industry "maverick" which had achieved "substantial shares in a number of metropolitan areas" and an increasing competitive threat to AT&T.[23] AT&T also acknowledged that Leap was responsible (together with MetroPCS) for "prompting other major providers, including AT&T, to make competitive responses."[24] As justification that its proposed acquisition of T-Mobile would not harm competition, AT&T further explained that wireless markets are prone to disruption by competitors such as Leap "because they have effectively distinguished themselves from Verizon, AT&T, and others on (for example) the basis of price."[25] Under AT&T's own reasoning, especially with MetroPCS now merged with T-Mobile, the continued independence of competitors like Leap is even more important to the health of the wireless marketplace.

The Applicants should not be heard to directly contradict representations made to the Commission in support of -- or in opposition to -- prior deals. Similarly, Leap's direct contradiction of statements made in its SEC filings and in its presentations to investors and consumers should not be countenanced.

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[21] *See Applications of AT&T Inc. & Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations*, WT Docket No. 11-65, Description of Transaction, Public Interest Statement and Related Demonstrations (filed April 21, 2011) ("*ATT-T-Mobile Statement*").
[22] *Id.* at 86 (referencing Leap's nationwide coverage map).
[23] *Id*. at 12-13.
[24] *Id.* at 82; *see also* Joint Opposition of AT&T Inc., Deutsche Telekom AG, and T-Mobile USA, Inc. to Petitions to Deny and Reply Comments, WT Docket No. 11-65 (filed June 10, 2011) (acknowledging providers such as Leap constrain the pricing decisions, as well as other terms and conditions of service, of the major carriers, including AT&T).
[25] *ATT-T-Mobile Statement* at 96. Yet, for the instant proposed transaction, Applicants see fit to disregard the value of an independent Leap to the competitive wireless marketplace – a value AT&T deemed great enough to even offset the harms of its proposed acquisition of another nationwide *facilities-based* carrier.

VI. **The Proposed Transaction Offers No Benefit or Certainty to Existing Leap Customers**

Applicants would have the Commission believe that existing Leap customers are rejoicing at the thought of becoming part of the AT&T family. Despite the self-proclaimed attractiveness of AT&T's offerings,[26] there are currently nearly five million Leap customers who have resisted AT&T's charms. For the most part, AT&T simply expects that prepaid customers will migrate over on their own initiative or, after "AT&T learns more about Leap's customer base, it ***may*** formulate offers designed to further encourage Leap customers to migrate to AT&T's network within 18 months of merger close."[27] Furthermore, AT&T, by its own admission, only has preliminary integration plans which "remain subject to change."[28]

Cricket's coverage area in south Texas is superior to AT&T's coverage, so there is no discernible advantage to be gained there.[29] Cricket already offers LTE service, so there is no advantage to be gained by an LTE roll out of this service. Since Cricket is spinning off its unique "Muve" service, which permits customers to download music for a flat fee, its customers will actually be losing a service that they currently have. [30] So from the consumer's standpoint, he is getting no benefit whatsoever from the AT&T acquisition.

The reality is that AT&T has not offered ***any*** certainty that Leap customers will actually get any of the touted benefits of being an AT&T customer without having to pay more money or give up benefits they currently enjoy under Leap.[31] Significantly, all existing Leap customers

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[26] "First and foremost, AT&T believes that Leap customers will find AT&T's device and rate plans attractive and will choose to migrate on their own initiative." *Applications of Cricket License Company LLC, et al., Leap Wireless International, Inc., and AT&T Inc. for Consent to Transfer Control of Authorizations*, WT Docket No. 13-193, Letter from AT&T and Leap in Response to Request from Commission Staff at 2-3 (filed August 20, 2013).
[27] *Id.* (emphasis added).
[28] *Id.*
[29] See Exhibit I, infra.
[30] See Exhibit B, Cricket announcement on spin off of Muve.
[31] Along the same lines, AT&T has not provided actual evidence that the proposed transaction will ultimately result in lower costs to similarly situated consumers generally.

will necessarily incur some additional equipment costs in order to transition from a CDMA-based network to AT&T's GSM-based network. AT&T brushes this off as a non-issue because, presumably, prepaid consumers are likely to upgrade their devices annually anyway. However, the evidence it cites to, its own experience and that of MetroPCS, has not been substantiated with respect to Leap customers. Additionally, AT&T's offer of a "bring your own device" option is worthless as (1) existing Leap CDMA devices are incompatible with AT&T's network and (2) unlocked devices are likely to be more expensive to obtain (and potentially more difficult to obtain in the interim while the copyright issues associated with unlocking are still unresolved). Moreover, AT&T's unique operator-specific non-interoperable LTE deployment in the 700 MHz Lower Band means that unless a customer has already acquired an LTE-capable device in a version specifically designed for AT&T's LTE network, the BYOD option is unattractive at best and irrelevant at worst. The capabilities of any other device will not be fully available to the customer on AT&T's network.

Because Leap's customer base is exclusively prepaid, the transition problems that concerned the Commission in connection with the ATN deal are magnified here many times over. (ATN had 182,000 prepaid customers vs. almost 5 million for Cricket.) AT&T may offer a palliative to soften the hit that these millions of customers are going to take, but if free phones are part of the equation, the cost-saving benefits touted by the Applicants may have to be offset by the enormous cost burden of providing free phones to literally millions of customers. (Unlike ATN, whose customer base included a relatively small proportion of prepaid customers, Leap's 5 million-strong customer base is entirely prepaid.) There is also the question of whether the transitioned Cricket customers, who will apparently continue to pay their low Cricket rates, will be allowed to enjoy all the network benefits touted by the Applicants. Why wouldn't all AT&T

customers be entitled to pay a lower rate for the same benefits? Ultimately, to properly assess the harms/benefits for prepaid customers, the Commission should require AT&T to provide a more concrete transition plan as well as additional data as suggested by Section 7 of the IAE Report.

Nor do the Applicants address the cost as well as the serious complications of having to dismantle and replace entire regional CDMA networks in Chicago and south Texas due to national security concerns about Chinese manufacturer Huawei. Cricket has installed Huawei-based networks in these markets, but Congress has issued grave warnings about the security risks associated with using Huawei and ZTE equipment. Given these national security concerns, we must assume that AT&T will not continue to operate these networks until CDMA is sunsetted. Indeed, if AT&T does not voluntarily commit to forego the use of these networks, the Commission might well impose such a condition as it did in the case of the SoftBank/Sprint merger. In order to continue to provide CDMA service in these markets for some interim period (we have proposed five years but even AT&T proposes some transitional period of continued CDMA service), AT&T will have to dismantle the Huawei CDMA network, replace it with another CDMA network, and at the same time expand its own GSM and LTE systems as it shifts customers off of Cricket's CDMA system. AT&T will therefore be faced with an enormous expense not accounted for anywhere in its assessment of the cost savings it will enjoy from this deal.

VII. **The Proposed Deal Will Exacerbate the Impending Non- Interoperability Crisis**

The attached IAE Report addresses in detail the crisis that is looming for the wireless industry due to the lack of interoperability between band plans and devices. Steps that are being

taken right now will have irrevocable consequences for competition in the industry for years to come. And unfortunately, despite Chairwoman Clyburn's best efforts to broker a stakeholder deal on interoperability, the deal that has been reached is not only tentative and highly qualified, but unenforceable. Right now interoperability is the very life blood of competition in the wireless industry, and the current deal, as reported, leaves AT&T with its hands on the jugular.

VIII. **Errors in Israel Declaration**

The IAE Report also points out numerous respects in which Dr. Israel's Report is significantly flawed and is not a sound basis for reliance. Among other things, Dr. Israel concedes that his work is "ongoing," that it is "subject to revision if new information" comes along, and that he has not "[to date] ... performed a detailed competitive analysis of every CMA where Leap has a non-negligible share." This qualifying language give us no confidence that Dr. Israel himself is willing to stand behind his opinions and conclusions, and we should certainly share the same skepticism. Other flaws based on lack of knowledge of the wireless industry or failure to apply economic principles are addressed in IAE's analysis.

IX. **This Proposed Transaction Differs Markedly from the ATN Transaction**

In the *ATN Order*, the Bureau professed "a deeply rooted preference for preserving and enhancing competition." *ATN Order* at p.9. While one may fairly question whether approval of the ATN deal had that effect, the *ATN Order* and the criteria it applied nevertheless provide a useful foil for the Leap transaction now under consideration. In virtually every respect, the public interest harms posed here are significantly greater than in the ATN case, and the

countervailing public interest benefits are non-existent. In looking at these factors, YC will focus on the south Texas market that it knows best and where the conditions are most extreme.

A. Harms

1. Unlike Allied Wireless, Cricket is a true nationwide competitor, and it has consistently held itself out to be such, as detailed above. Its merger into AT&T would therefore eliminate a disruptive national competitive force which acts as a check on the ability of AT&T and Verizon to raise prices.

2. Contrary to the Commission's assumption that national carriers do not vary their price plans across markets (*ATN Order* at Para. 25), YC has demonstrated that Cricket in fact did deviate from its national price offerings as well as its coverage models in south Texas to counter the serious competitive threat posed by Pocket Communications. Once that threat was eliminated by Leap's acquisition of Pocket, retail rates quickly were raised back to the national standard. One must assume that AT&T will similarly raise Cricket's rates where there is no serious competitive threat.

3. In the ATN transaction, AT&T ended up holding less than a third of the key spectrum under 1 GHz. Here AT&T will hold more than a third and in some cases more than 50% of this spectrum. See Exhibit A.

4. As in the clusters identified in the *ATN Order* as creating an anti-competitive situation, the market share levels identified here in south Texas show that the transaction would create a classic duopoly in which AT&T and Sprint would together control as much as [Begin redacted matter] [redacted] [End redacted matter]

are exceeded by a wide margin, as is the spectrum screen for all spectrum, not just the below 1 GHz territory.

5. Unlike many of the markets involved in the ATN deal, in south Texas AT&T is already a formidable presence. Its acquisition here simply adds to an already strong competitive position.

6. It is unclear whether AT&T plans to retain Cricket's unique "Muve" feature. Rather than gaining access to any new features, Cricket customers may actually lose one.

7. Since AT&T plans to retain the Leap brand, there will be no savings in sales, advertising and marketing costs; the brand will have to continue to incur these costs.

8. Because Cricket's almost 5 million customers are prepaid, their transition to AT&T's non-CDMA network will be especially problematic. In ATN's case, the prepaid segment was only about 182,000 subscribers. Absent commitments from AT&T to give them free phones, these folks who do not qualify for the discounted phones available to AT&T's post-paid customers will either be left high and dry or have to dig into their own pockets to maintain cellular service. If AT&T does decide to pick up this tab, it will present an enormous cost, given the size of Cricket's prepaid customer base. And if AT&T does not pick up the tab, Leap's low income customer base is the market segment *least* able to bear this burden.

9. Unlike some of the clusters that were of concern in the ATN case, here the merger with Leap will unquestionably result in a reduction in the number of competitors. In every market where Leap is present, AT&T is too.

10. Unlike ATN, Leap does not suffer from disjointed and isolated islands of service. In addition to San Antonio and south Texas, Cricket services over 45 major U.S.

markets including Chicago, Houston, Philadelphia, Phoenix, Tucson, Las Vegas, Denver, Kansas City, Pittsburgh, and San Diego.

11. Unlike ATN, about 40% of Leap's spectrum is currently unused. It has a wealth of spectrum to expand its operations into.

12. The deal calls for Leap to sell off its Chicago 700 MHz license. Because of the high price tag associated with this license, it is unlikely that anyone but a major carrier would be able to buy it. So instead of the disruptive, low cost competitor in this space that Leap promised when acquiring this license, it will end up in the hands of another big carrier -- quite possibly AT&T when the dust has settled on this transaction and no other buyer has come forward. This latter possibility will almost certainly come true if the Commission does not act more forcefully and immediately to impose interoperability requirements on AT&T - - the lower band 700 MHz service will simply be untenable for any independent operator.

B. Any "Benefits" are Illusory

1. Cricket already provides 4G LTE in south Texas, so there is no need for an AT&T roll out.

2. Cricket's voice, 3G, and 4G coverage area in south Texas is superior to those of AT&T and the larger carriers, so no benefit is to be gained by access to AT&T's footprint. See Ex. I

3. Leap just announced that it has obtained access to thousands of hot spots around the nation. Access to AT&T's hot spots is therefore unnecessary and superfluous.

4. Even extending by some small margin the period that Cricket's CDMA network is operational and available to other carriers to roam on would not make up for the permanent loss of a major source of reasonably priced roaming as an alternative to Verizon Wireless.

This proposed transaction is nothing like the ATN deal just approved by the Bureau. Rather, the serious harms and the lack of benefits presented by this deal rival in scope and significance the proposed T-Mobile/AT&T deal and should be approached by the Commission with equally strong misgivings.

X. **The Need for a New Evaluative Paradigm**

YC has presented above its strong objections to this transaction based on the Commission's current evaluative criteria. Under those criteria, this transaction flatly fails to meet the public interest test. But more fundamentally, YC suggests that the Commission needs to adopt a more expansive view of the public interest in assessing major mergers or acquisitions like this one. The fact of the matter is that Verizon Wireless and AT&T over the last two decades have inexorably bought up or bought out dozens of large regional carriers who were competing against them in various parts of the country. By fixing its gaze narrowly on whether this transaction or that one triggers the spectrum screen in a particular market or causes a market share concentration in a particular cluster, the Commission has seemingly lost sight of the bigger picture. Indeed, the combined effect of all of AT&T's pending or approved acquisitions over the last five years might well rival the deleterious effect of the T-Mobile deal, which was notable only for accomplishing in one fell swoop what AT&T had been gradually doing by piecemeal acquisitions.

With the exception of the T-Mobile/AT&T proposal in 2011, the Commission has approved every single merger or acquisition which has been presented to it. This process has dramatically and fundamentally changed the landscape of the American wireless industry from one characterized by numerous diverse, independently owned and regionally focused firms, to one which is composed mainly of AT&T, Verizon, T-Mobile, Sprint and Leap. Indeed, in each proposed acquisition, including the instant one, AT&T and the target entity explain at length why the target entity cannot go on as an independent entity (high roaming costs, high backhaul costs, etc.), blithely ignoring the irony that it is precisely the continuing consolidation of which each transaction becomes a part that *causes* the conditions complained of. Because of the compartmentalized way in which each transaction is evaluated, the consolidation takes place without any thoughtful examination of whether the concentrated industry structure we have arrived at is good for the public interest. It is as though the United States ended up with only two stores, Wal-Mart and Target, to shop at, and two restaurants, McDonald's and Burger King, to eat at, and everyone then scratched their heads and wondered how that ever happened.

In our view, no ecosystem, whether it be a rain forest or a national economy, can thrive, innovate, and evolve if it is reduced to a monoculture which stamps out diversity and uniqueness in the interest of "economies of scale." The Commission's declaration that mergers "can enhance the merged firm's ability and incentive to compete and therefore result in lower prices, improved quality of service, enhanced service or new products" (*ATN Order* at Para. 65) needs to be rigorously revisited. Our experience of mergers in the telecom field over the last decade has been that none of them have resulted in lower prices or improved quality but rather quite the opposite. All of the cost savings enjoyed by the merged firm as a result of any efficiencies of operation go to benefit the firm's shareholders rather than customers. And service innovations

have come almost exclusively from the disruptive upstarts, not the majors who are understandably comfortable with the status quo. The Commission's reliance on potential cost savings as a factor justifying mergers is therefore highly questionable as a public interest factor.

What has happened in the wireless industry is that Verizon and AT&T have effectively reassembled in duopoly form the Bell System that Judge Greene dismantled in 1984. The competitive telecom paradigm that Congress tried to create and foster in the '96 Act has now gone by the wayside. The industry is falling back toward a pre-Bell break-up model without any of the pre-break-up regulations that curbed monopoly behavior. The Commission should not continue to allow the consolidation which is undermining the foundations on which competition is built. The buying binge by the majors must be brought to a halt, and now is the time to draw that line.

We urge the Commission to take this opportunity to pause, forget about the pressure of the shot clock, and make a reasoned, informed judgment about whether there should continue to be a place for independent wireless providers who are willing to compete against the majors. If commercial diversity is a value we as a nation wish to preserve, then the Commission should consciously adopt that as a value and this deal should be rejected.

XI. **Conclusion**

In evaluating this transaction, the Commission should require the applicants to provide specific facts needed to resolve whether this transaction is in the public interest:

- Roaming: What rates do Cricket and AT&T currently offer other carriers? Will the Cricket rates be maintained in the short term and in the long run when the CDMA network is de-commissioned?

- Transition of prepaid customers. How long will AT&T maintain the rate plans now available to Cricket customers, and will those on such rate plans have access to all of the features available to other AT&T customers? How would prepaid customers be able to "bring their own device" to AT&T's incompatible network?

- Reduced rates. How, if at all, will consumers benefit from any cost-savings experienced by AT&T and Leap as a result of the merger? Specifically, will rates be reduced? Cite any instances where AT&T rates have gone down in connection with "efficiencies" resulting from previous acquisitions or mergers.

- Identify areas in which AT&T and Leap are both licensed where the merger would result in fewer than four significant service providers (i.e., providers with more than 5% of the market)

- Provide porting data that differentiates between post-paid and prepaid customers for purposes of determining their relative propensity to switch to AT&T.

We believe these additional materials will provide further corroboration for the facts set forth here. The application contradicts Leap's long and widely published self-characterization as a nationwide carrier, it derogates Cricket's strong and viable competitive position in many markets, but especially south Texas, it ignores the serious negative impact on other carriers and consumers of Cricket's departure from the CDMA roaming pool, it downplays the public benefit of having a low cost alternative to the major carriers, and it ignores the perverse effects of extreme spectrum and market share concentration that would occur in south Texas. All of these factors compel the conclusion that the application should either be (i) denied outright, (ii) deferred until Docket 12-269 is resolved, (iii) put into a hearing, as the Commission proposed to

do with T-Mobile, or (iv) conditioned on any spectrum limits adopted in Docket 12-269.

Alternatively, if the Commission elects to grant the application in some part, it should

- require divestiture of the south Texas region to an independent carrier prior to the AT&T transaction taking place;

- require Cricket's current roaming rates and terms to be offered to other carriers both until the de-activation of the CDMA network and for on-going LTE operations;

- ensure that Cricket's prepaid customers can keep their existing services and are not forced to buy new phones and pay higher prices if they migrate to the AT&T network; and

- require AT&T to ensure meaningful interoperability with other carriers' services and devices -- something which has been assured not at all by the recent "commitments" made by AT&T in response to Chairwoman Clyburn's interoperability initiative.

Respectfully submitted,

Youghiogheny Communications, LLC

By_____/s/_____

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September 27, 2013

Declaration of Paul Posner

I, Paul Posner, do hereby declare under penalty of perjury, that I am the managing member of Youghiogheny Communications, LLC, that a wholly-owned subsidiary of Youghiogheny Communications, LLC is the former owner of the business know as Pocket Communications, that I have managed wireless communications systems, and I resided in the San Antonio, TX market between 1999 and 2013. I am therefore personally familiar with the market for wireless services in south Texas and in the country more generally. The transaction proposed in the application which the attached Petition to Deny opposes would adversely affect the citizens of south Texas, including myself for the reasons set forth in the Petition. I personally gathered or supervised the gathering of the information set forth in the Petition, and the facts contained therein are true and correct to the best of my knowledge and belief. The facts set forth in the IAE Report are the work of those authors and they separately attest to the truth of matters there averred.

Paul Posner _____ 9.27.13

Paul Posner Date

EXHIBIT A

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SPECTRUM AVAILABILITY AFTER AT&T ACQUISITION

Methodology: Research was conducted by using two online zip code databases (Zipcode.com and Zipcode.org) to search all of the zip codes that were within each county. Each zip code was then run through Clearwire's online service locator (at Clearwire.com) to determine whether or not Clearwire was available in that particular area. Counties that contain zip codes with Clearwire service available contain a "YES" under "BRS Available?" on the above chart. Any county listed with a "NO" in the BRS column did not have Clearwire service available in any of the zip codes within its boundaries.

Legend:

South Texas Cluster (highlighted cells)

Nearby Markets (not highlighted cells)

County	CMA	State	BRS Available?	BRS Holdings	Screen	Total	Amount Screen is Exceeded
Cameron	162, Brownsville-Harlingen	TX	NO	Clearwire	132	180	**+48**
Hidalgo	128, McAllen-Edinburg-Mission	TX	NO	Clearwire	132	180	**+48**
La Salle	669, Texas 18 - Edwards	TX	NO	Clearwire	132	168	**+36**
Maverick	669, Texas 18 - Edwards	TX	NO	Clearwire	132	163	**+31**
Zavala	669, Texas 18 - Edwards	TX	NO	Clearwire	132	163	**+31**
Aransas	670, Texas 19 - Antascosa	TX	NO	Clearwire	132	160	**+28**
Bee	670, Texas 19 - Antascosa	TX	NO	Clearwire	132	160	**+28**
Refugio	671, Texas 20 - Wilson	TX	NO	Clearwire	132	160	**+28**
Bandera	669, Texas 18 - Edwards	TX	NO	-Clearwire -Omega	132	158	**+26**
Frio	669, Texas 18 - Edwards	TX	NO	Clearwire	132	158	**+26**
Medina	669, Texas 18 - Edwards	TX	NO	-Clearwire -Omega	132	158	**+26**
Uvalde	669, Texas 18 - Edwards	TX	NO	Clearwire	132	158	**+26**
Starr	670, Texas 19 - Antascosa	TX	NO	Clearwire	132	156	**+24**
Webb	281, Laredo	TX	NO	Clearwire	132	156	**+24**
Willacy	670, Texas 19 - Antascosa	TX	NO	Clearwire	132	156	**+24**
Nueces	112, Corpus Christi	TX	YES	Clearwire	151	170	**+19**
San Patricio	112, Corpus Christi	TX	YES	Clearwire	151	170	**+19**
Karnes	671, Texas 20 - Wilson	TX	NO	Clearwire	132	150	**+18**
Wilson	671, Texas 20 - Wilson	TX	NO	-Clearwire -Omega	132	150	**+18**
Kendall	666, Texas 15 - Concho	TX	NO	Clearwire	132	143	**+11**
Kerr	666, Texas 15 - Concho	TX	NO	Clearwire	132	143	**+11**
Guadalupe	33, San Antonio	TX	NO	-Clearwire -Omega	132	140	**+8**
Brooks	670, Texas 19 - Antascosa	TX	NO	Clearwire	132	136	**+4**
Duval	670, Texas 19 - Antascosa	TX	NO	Clearwire	132	136	**+4**
Jim Hogg	670, Texas 19 - Antascosa	TX	NO	Clearwire	132	136	**+4**
Jim Wells	670, Texas 19 - Antascosa	TX	NO	Clearwire	132	136	**+4**
Kenedy	670, Texas 19 - Antascosa	TX	NO	Clearwire	132	136	**+4**
Kleberg	670, Texas 19 - Antascosa	TX	NO	Clearwire	132	136	**+4**
Live Oak	670, Texas 19 - Antascosa	TX	NO	Clearwire	132	136	**+4**
McMullen	670, Texas 19 - Antascosa	TX	NO	Clearwire	132	136	**+4**
Zapata	670, Texas 19 - Antascosa	TX	NO	Clearwire	132	136	**+4**

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Legend:

South Texas Cluster (highlighted cells)

Nearby Markets (not highlighted cells)

County	CMA	State	BRS Available?	BRS Holdings	Screen	Total	Amount Screen is Exceeded
Atascosa	670, Texas 19 - Antascosa	TX	NO	-Clearwire -Omega	132	126	**-6**
Bexar	33, San Antonio	TX	YES	-Clearwire -Omega	151	140	**-11**
Comal	33, San Antonio	TX	YES	Omega	151	140	**-11**
Cacasieu	197, Lake Charles	LA	NO	Clearwire	132	180	**+48**
Hardin	101, Beaumont-Port Arthur	TX	NO	Clearwire	132	175	**+43**
Jefferson	101, Beaumont-Port Arthur	TX	NO	Clearwire	132	175	**+43**
Orange	101, Beaumont-Port Arthur	TX	NO	Clearwire	132	175	**+43**
Austin	667, Texas 16 - Burleson	TX	NO	Clearwire	132	168	**+36**
Fayette	667, Texas 16 - Burleson	TX	NO	Clearwire	132	168	**+36**
Matagorda	667, Texas 16 - Burleson	TX	NO	Clearwire	132	168	**+36**
Washington	667, Texas 16 - Burleson	TX	NO	Clearwire	132	168	**+36**
Wharton	667, Texas 16 - Burleson	TX	NO	Clearwire	132	168	**+36**
Dimmit	669, Texas 18 - Edwards	TX	NO	Clearwire	132	163	**+31**
Jasper	668, Texas 17 - Newton	TX	NO	Clearwire	132	160	**+28**
Newton	668, Texas 17 - Newton	TX	NO	Clearwire	132	160	**+28**
Tyler	668, Texas 17 - Newton	TX	NO	-Beal Jr., L.M. -Clearwire -Lipscomb Interest Partnership	132	160	**+28**
Burleson	667, Texas 16 - Burleson	TX	NO	Clearwire	132	158	**+26**
Jackson	667, Texas 16 - Burleson	TX	NO	Clearwire	132	158	**+26**
Lavaca	667, Texas 16 - Burleson	TX	NO	Clearwire	132	158	**+26**
Real	669, Texas 18 - Edwards	TX	NO	Clearwire	132	158	**+26**
Galveston	170, Galveston-Texas City	TX	NO	Clearwire	132	155	**+23**
Val Verde	669, Texas 18 - Edwards	TX	NO	Clearwire	132	153	**+21**
Victoria	300, Victoria	TX	NO	Clearwire	132	150	**+18**
Gonzales	667, Texas 16 - Burleson	TX	NO	Clearwire	132	148	**+16**
Brazos	287, Bryan-College Station	TX	NO	Clearwire	132	145	**+13**
Chambers	672, Texas 21 - Chambers	TX	NO	Clearwire	132	145	**+13**
Grimes	668, Texas 17 - Newton	TX	NO	Clearwire	132	145	**+13**
Houston	668, Texas 17 - Newton	TX	NO	-Beal Jr., L.M. -Clearwire -Lipscomb Interest Partnership	132	145	**+13**

EXHIBIT A

SPECTRUM AVAILABILITY AFTER AT&T ACQUISITION

Methodology: Research was conducted by using two online zip code databases (Zipcode.com and Zipcode.org) to search all of the zip codes that were within each county. Each zip code was then run through Clearwire's online service locator (at Clearwire.com) to determine whether or not Clearwire was available in that particular area. Counties that contain zip codes with Clearwire service available contain a "YES" under "BRS Available?" on the above chart. Any county listed with a "NO" in the BRS column did not have Clearwire service available in any of the zip codes within its boundaries.

Legend:

South Texas Cluster (highlighted cells)

Nearby Markets (not highlighted cells)

County	CMA	State	BRS Available?	BRS Holdings	Screen	Total	Amount Screen is Exceeded
Madison	668, Texas 17 - Newton	TX	NO	Clearwire	132	145	**+13**
Polk	668, Texas 17 - Newton	TX	NO	-Beal Jr., L.M. -Clearwire -Lipscomb Interest Partnership	132	145	**+13**
San Jacinto	668, Texas 17 - Newton	TX	NO	Clearwire	132	145	**+13**
Trinity	668, Texas 17 - Newton	TX	NO	-Beal Jr., L.M. -Clearwire -Lipscomb Interest Partnership	132	145	**+13**
Walker	668, Texas 17 - Newton	TX	NO	Clearwire	132	145	**+13**
Gillespie	666, Texas 15 - Concho	TX	NO	Clearwire	132	143	**+11**
Hudspeth	663, Texas 12 - Hudspeth	TX	NO	Clearwire	132	143	**+11**

Exhibit B

Find the Vendors You Trust and the Products You Need
Search CommTech >
FIERCEMARKETS CommTech
Search Smarter Not Harder

Cricket spinning off Muve Music, will license service to rival operators

February 26, 2013 | By Jason Ankeny

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6
Tweet
3
Share
0
Like
0

Leap Wireless' (NASDAQ:LEAP) Cricket Communications subsidiary will spin off its popular Muve Music service and begin licensing the platform to other mobile operators across the globe.

Cricket will establish a standalone Muve Music unit because it believes operators will find the service more attractive if they are not forced to license it from a rival carrier, Leap Wireless EVP of Strategy Bill Ingram told *GigaOM*. Ingram said the spinoff will offer the Muve Music distribution, discoverability and licensing platform as a managed service, giving carriers flexibility to rebrand the service and establish their own pricing rates and packages. He added that one international agreement is already in place, but declined to name the carrier in question.

Muve Music, launched in 2011, allows customers to download an unlimited number of songs onto their Cricket phones. The carrier offers tracks from labels including Universal Music Group, Warner Music Group and Sony Music Entertainment. In the fall of 2012, the carrier extended the all-you-can-eat service to all Android rate plans, which start at $50 per month. Muve Music was previously offered exclusively as part of Cricket's $65 flat-rate monthly package.

TOOLS
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Tune-in to this webinar by Pegasystems, to hear how Cox Communications is leveraging real-time decisioning and analytics to deliver exceptional value to both customers and the business. Register Today!

Last month, Cricket told *FierceMobileContent* there are now more than 1.1 million Muve Music subscribers. Spokesman Greg Lund said the average user downloads more than 100 songs per month and listens to over 20 hours of music per month, adding that hip-hop and Latin are among the most popular genres.

For more:
- read this *GigaOM* article

Related articles.
Leap's Muve Music service reaches 1.1 million user mark
Leap CEO: Muve Music improves churn
Cricket expands Muve Music to all Android rate plans
Leap: We won't make $75M payment to Sprint for 2012 network access
Muve Music doubles catalog to 10 million tracks via CDBaby, TuneCore
Cricket's Muve Music surpasses 500,000 users

Filed Under Android, Cricket Communications, Leap Wireless, Mobile Music, Muve Music

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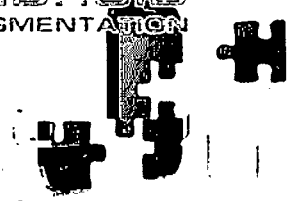
eBook From FierceWireless
AVOIDING THE PITFALLS OF ANDROID FRAGMENTATION



POPULAR STORIES

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Microsoft updates Facebook for Windows Phone 8 to solve crashing issue

Best new Android, iOS apps of March 2013

iPhone owners bemoan battery drain, Wi-Fi issues following iOS 6.1.3 update

Viber extends free voice calling to BlackBerry app, sidesteps BB10

iOS jailbreak app Installous shuts down, but new piracy options emerge

THE LIBRARY: WHITEPAPER

The Importance of Managing Privileged Accounts

Organizations can benefit greatly from a methodical process for the proper use, management and enforcement of administrative privileges. Read this whitepaper to learn how to develop and enforce a strategy for managing privileged accounts.

MORE ITEMS

Exhibit C

NATIONAL (every other market in the US note: incl other texas markets likeaustin, houston, el paso)

	$30	$35	$40	$45	$50	$60
talk	*	*	*	*	*	*
CID	*	*	*	*	*	*
text		*	*	*	*	*
LD		*	*	*	*	*
pix			*	*	*	*
features (cw, 3way, vm)			*			
mexico text				*	*	*
call forwarding				*	*	
mobile web					*	*
premium extended coverage					*	*
30 min roam					*	*
200 min roam						*
411 directory assistance						*

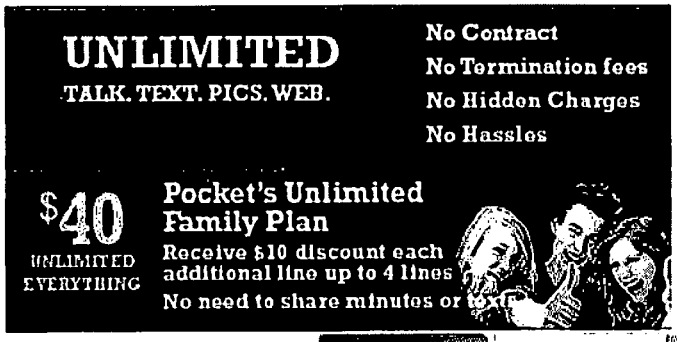
SOUTH TEXAS (sa, laredo, corpus, rgv)

	$25	$30	$35	$40	$45
talk	*	*	*	*	*
CID	*	*	*	*	*
text	*	*	*	*	*
LD	*	*	*	*	*
pix	*	*	*	*	*
mexico text	*	*	*	*	*
features (cw, 3way, vm)		*	*	*	*
411			*	*	*
30 min Mexico landline			*	*	*
premium extended coverage				*	*
100 min Mexico landline				*	*
call forwarding					*
30 min roam					*

Exhibit D-1

Pocket's Rates in South Texas Prior to Cricket Acquisition of Merger

- Select Plan
- Select Phone
- Select Accessories
- Checkout



Monthly Rate Plans for Texas

	$25	$30	$35	$40	Family Plan
Unlimited Local Calling Includes: San Antonio, Laredo, Rio Grande Valley	Included	Included	Included	Included	Included
Unlimited Text Messaging	Included	Included	Included	Included	Included
Unlimited MMS - Picture Messaging	Included	Included	Included	Included	Included
Unlimited Long Distance	Included	Included	Included	Included	Included
Unlimited SMS - Text Messaging Mexico	-	Included	Included	Included	Included
Unlimited VoiceMail, Caller ID, Call Waiting	-	-	Included	Included	Included
Unlimited Call Forwarding, 3 Way Calling	-	$3.00	Included	Included	Included
Unlimited Directory Assistance	-	$3.00	$3.00	Included	Included
Unlimited Web	-	$5.00	$5.00	Included	Included
Int'l Text Msg	-	$5.00	$5.00	$5.00	$5.00
Handset Protection	$5.00	$5.00	$5.00	$5.00	$5.00

Exhibit D-2

Cricket's Rates in South Texas Subsequent to Cricket Acquisition of Pocket

Order Now
Call 800-975-3708
or Click to Chat

activate top-up send text en español
search mycricket.com go
coverage maps find a store email signup
items in cart: 0

cell phone plans
your location: san antonio, tx 78245 (change)

Basic plans Smartphone plans

Cricket has a plan for every budget, whether you're a big talker, an expert texter or a data downloader. Interested in smartphones? Cricket also offers Android plans with Muve Music and no-contract iPhone plans. See what fits you best!

EVERYDAY CRICKET VALUE

No Contracts
Nationwide Coverage
Free Overnight Shipping

$35 BASIC PLAN	$45 VALUE PLAN
$35/month	$45/month
view plan details	view plan details
add to cart	add to cart
UNLIMITED VOICE:	UNLIMITED VOICE:
talk	talk
US long distance	US long distance
voicemail	voicemail
caller ID	caller ID
call waiting	call waiting
3-way calling	3-way calling
call forwarding	call forwarding
UNLIMITED MESSAGING:	UNLIMITED MESSAGING:
text	text
picture	picture
video	video
international text	international text
	international picture
	international video
	UNLIMITED DATA:
	mobile web
view plan details	view plan details

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Cricket Wireless has affordable cell phone plans with no contract, no credit check, nationwide coverage, and free overnight shipping. From basic plans to smartphone plans and unlimited mobile music plans, we offer unlimited talk, text and data with no overages and no contracts. Compare us to the competition, and you'll find that we have the best cell phone plans and offer the best value for your money.

Find the No Contract Cell Phone Plan That's Right For You

The Cricket difference is respect. We respect your freedom and your wallet. We won't tie you down to a contract, and we'll give you access to the phones and plans that fit your lifestyle. Compare our Basic, Android, iPhone, and 4G LTE cell phone plans now and find the one that matches your communication needs!

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Exhibit E

AT&T Chief: Cricket Will Be Our Lower-Cost Brand

Joan Engebretson

The wireless business is "going to get more competitive," said AT&T Chairman and CEO Randall Stephenson at the Goldman Sachs Communacopia Conference this morning.

Stephenson believes AT&T's traditional "high-end" customer base of "early adopters" will remain loyal because they appreciate AT&T's network quality. But where the company is exposed is at the price-sensitive end of the market, he said.

"That's one of the reasons we're doing the Cricket deal," Stephenson said. "We will compete very aggressively using that brand." AT&T expects to close the deal to purchase Leap Wireless, operator of the Cricket brand, in the first quarter of next year, he noted.

Other key AT&T focus areas include mobile video, retiring the company's traditional TDM network by 2020 and growing what Stephenson called "strategic business" services including Ethernet, virtual private networks and IP broadband.

"The future is about video delivery," said Stephenson, who noted that more than 50% of AT&T's traffic is driven by video. Stephenson pointed to the company's Digital Life home automation offering and over-the-top as opportunities in the video realm.

The company is developing broadcast capability for its wireless network that will move popular video traffic off of the wide area network. Stephenson confirmed that the broadcast network will use the 700 MHz spectrum AT&T acquired from Qualcomm, noting that the company also is considering using an additional spectrum block so that one block would handle downstream traffic and the other would handle upstream traffic.

As for the company's plans to retire TDM, Stephenson said the company's goal is to have infrastructure that is "all-IP, all-wireless and all-cloud" by 2020. "The amount of cost that removes from [our] legacy [business] is dramatic," said Stephenson.

The biggest constraint against making that move is regulatory, Stephenson said, expressing frustration at how long it is taking the FCC to move on AT&T's request to do an all-IP transition trial. Stephenson said he is "enthusiastic" about the possibility that Tom Wheeler will take over as FCC chairman, noting that Wheeler understands the pace of telecom technology change.

On the business side, Stephenson said AT&T's legacy services are largely tied to the number of "butts in seats" that business customers have. Because companies aren't adding people to their payroll, growth of those services is limited, he said.

Stephenson was more enthusiastic about strategic business services such as Ethernet, VPN and IP broadband, however. Those services are growing at 15% annually, he said. He did note, however, that those services cannibalize the company's legacy services revenues.

Other interesting information from the presentation:

- Data center efficiency can improve by 70% by using commodity hardware and "virtualizing" the data center
- AT&T expects to add "tens of thousands" of small cells to its wireless network

Exhibit F

CASH FOR BUILDINGS
Austin Area Only
(512) 927-6100 x105
12:45
Samsung GALAXY S III
4G LTE
PLANS FOR
HALF THE PRICE
OF AT&T AND VERIZON
cricket
your call
SMILE CENTER DENTAL
NEED DENTAL
NEED BRACES

Exhibit G

activate top-up send text **en español**

search mycricket.com go

coverage maps find a store email signup

items in cart: 0

PLANS STARTING AT $50/mo

GET UNLIMITED PLANS FOR HALF THE PRICE OF AT&T AND VERIZON AND DO MORE

SHOP NOW

Exhibit H

Order Now
Call 800-975-3708
or Click to Chat

activate payment send text **en español**

coverage maps find a store email signup search mycricket.com **go**

items in cart: 0

cricket | cell phones | plans | muve music | cricket PAYGo | features & downloads | accessories | coverage

compare smartphone data plans – compare smartphone providers

navigate

Overview
Competitive Comparison
Smart Plan Comparison
Feature Plan comparison

Company Information
Careers

already have cricket?

Log in for easy access and save time by managing your account online.
Login now:
Phone # Password
register
forgot password?
sign in

Get a hot new smartphone with a plan that's half the price!

shop plans

See how much you SAVE with CRICKET compared to other carriers' 2 year contracts!*	at&t	verizon	Sprint
	Nation Unlimited Plan $2,950	Share Everything $2,200	My All-In $2,700
	Cricket Customers Save $1,820	Cricket Customers Save $1,100	Cricket Customers Save $1,340

Cricket's $45 Android plan* offers MORE FEATURES than the competition, for HALF THE PRICE!

	cricket wireless muve MUSIC	at&t	verizon	Sprint
	$45 ANDROID PLAN *	Nation Unlimited Plan	Share Everything	My All-In
Total Monthly Cost	ONLY $45	$120	$90	$110
Data Allowance	UNLIMITED [1]	3 GB	1 GB	UNLIMITED [2]
Data Overages	NONE	$2 / 1 MB	$15 / 1 GB	NONE
Activation Fee	$15	$36	$35	$36
Contract Length	NONE	2 Years	2 Years	2 Years
Anytime Talk	UNLIMITED	UNLIMITED	UNLIMITED	UNLIMITED
Text Messaging	UNLIMITED	UNLIMITED	UNLIMITED	UNLIMITED
International Text Messaging	UNLIMITED	25¢/ Msg Sent	20¢ Msg Rec'd / 25¢ Msg Sent	$10/mo
Early Termination Fee	NONE	$325	$350	$350
Price Per Song	FREE	$0.69 - $1.29	$0.69 - $1.29	$0.69 - $1.29
Price Per Ringtone	FREE	$2.49	$2.99	$2.50
Uses Plan Data	NO	YES	YES	YES
Price Per Ringback Tone	FREE	$1.99	$1.99	$1.99

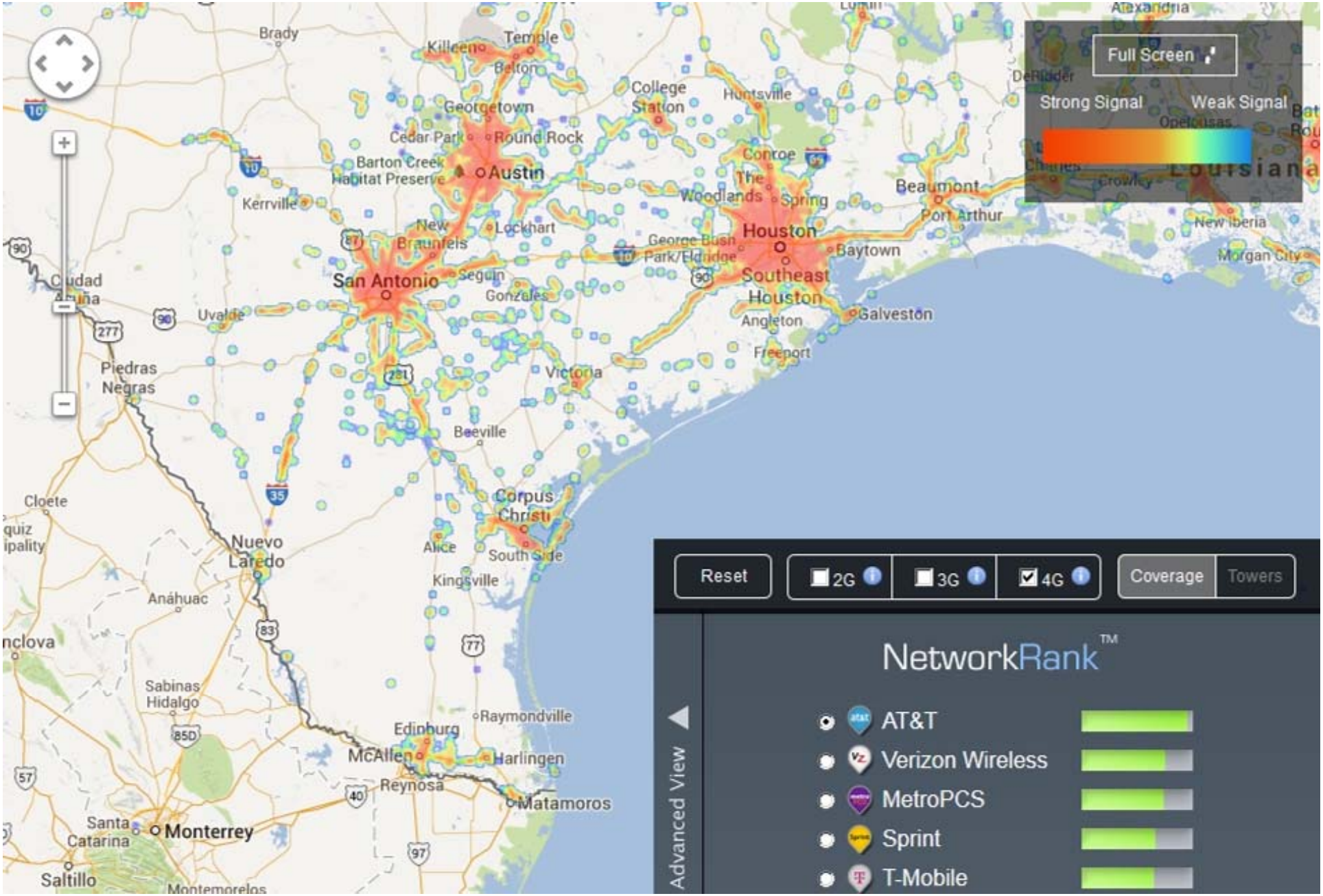
Most recent comparison as of July 19, 2013

With our $45 Android plan, you get unlimited talk, text, and data, plus you're not tied down by any contracts. Simply put, Cricket offers smartphone value that other carriers can't match.

PLUS you can try **Cricket risk free**! There's no two-year contract to worry about and when you buy online you have 30 days to try our service. If you're not satisfied, you can return your purchase for a full refund. With Cricket, you've got nothing to lose-only money to save.

Browse the best new smartphones from Cricket. **shop now**

Exhibit I


Full Screen
Strong Signal
Weak Signal
Reset
2G
3G
4G
Coverage
Towers
NetworkRank™
AT&T
Verizon Wireless
MetroPCS
Sprint
T-Mobile
Advanced View
Brady
Killeen
Temple
Belton
Georgetown
Cedar Park
Round Rock
Barton Creek Habitat Preserve
Austin
Kerrville
New Braunfels
Lockhart
San Antonio
Seguin
Gonzales
Uvalde
Piedras Negras
Ciudad Acuña
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Huntsville
Conroe
The Woodlands
Spring
Houston
Southeast Houston
Baytown
Galveston
Angleton
Freeport
Beaumont
Port Arthur
New Iberia
Morgan City
Victoria
Beeville
Corpus Christi
South Side
Alice
Kingsville
Nuevo Laredo
Anáhuac
Sabinas Hidalgo
Edinburg
McAllen
Raymondville
Harlingen
Reynosa
Matamoros
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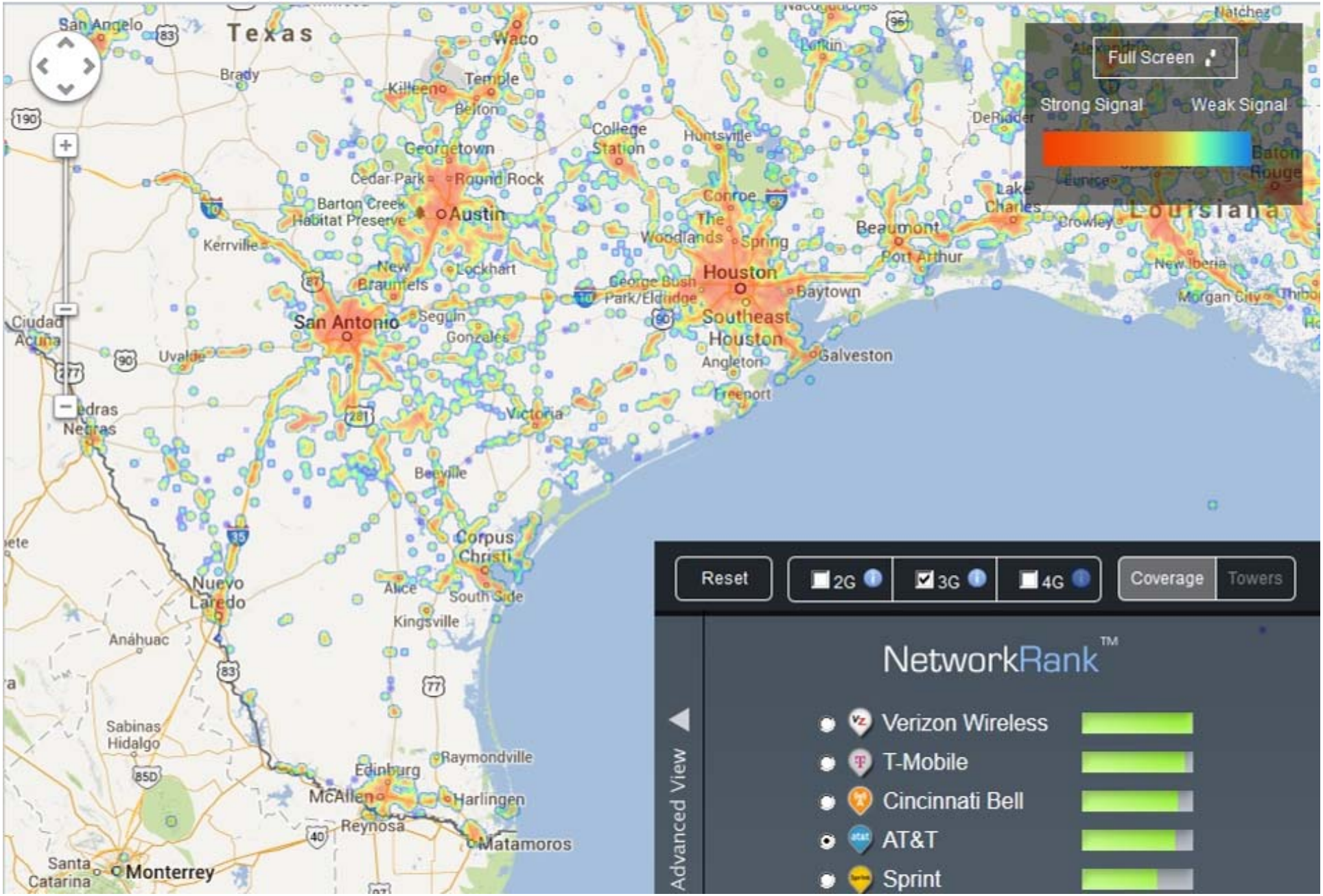
Opelousas
Crowley
Louisiana


Full Screen
Strong Signal
Weak Signal
Texas
Louisiana
San Angelo
Brady
Waco
Killeen
Temple
Belton
Georgetown
Cedar Park
Round Rock
Barton Creek Habitat Preserve
Austin
Kerrville
New Braunfels
Lockhart
San Antonio
Seguin
Gonzales
Uvalde
Ciudad Acuña
Piedras Negras
Victoria
Beeville
Corpus Christi
Alice
South Side
Kingsville
Nuevo Laredo
Anáhuac
Sabinas Hidalgo
Raymondville
Edinburg
McAllen
Harlingen
Reynosa
Matamoros
Santa Catarina
Monterrey
College Station
Huntsville
Conroe
The Woodlands
Spring
George Bush Park/Eldridge
Houston
Southeast Houston
Baytown
Angleton
Freeport
Galveston
Beaumont
Port Arthur
Lake Charles
Crowley
New Iberia
Morgan City
Baton Rouge
Eunice
DeRidder
Natchez
Lufkin
Reset
2G
3G
4G
Coverage
Towers
NetworkRank™
Verizon Wireless
T-Mobile
Cincinnati Bell
AT&T
Sprint
Advanced View

search cricket coverage

My home zip code: 78248 (Change)

Check coverage for a specific location:

Street:

City: San Antonio State: TX Zip: 78248

show coverage

coverage map legend print map

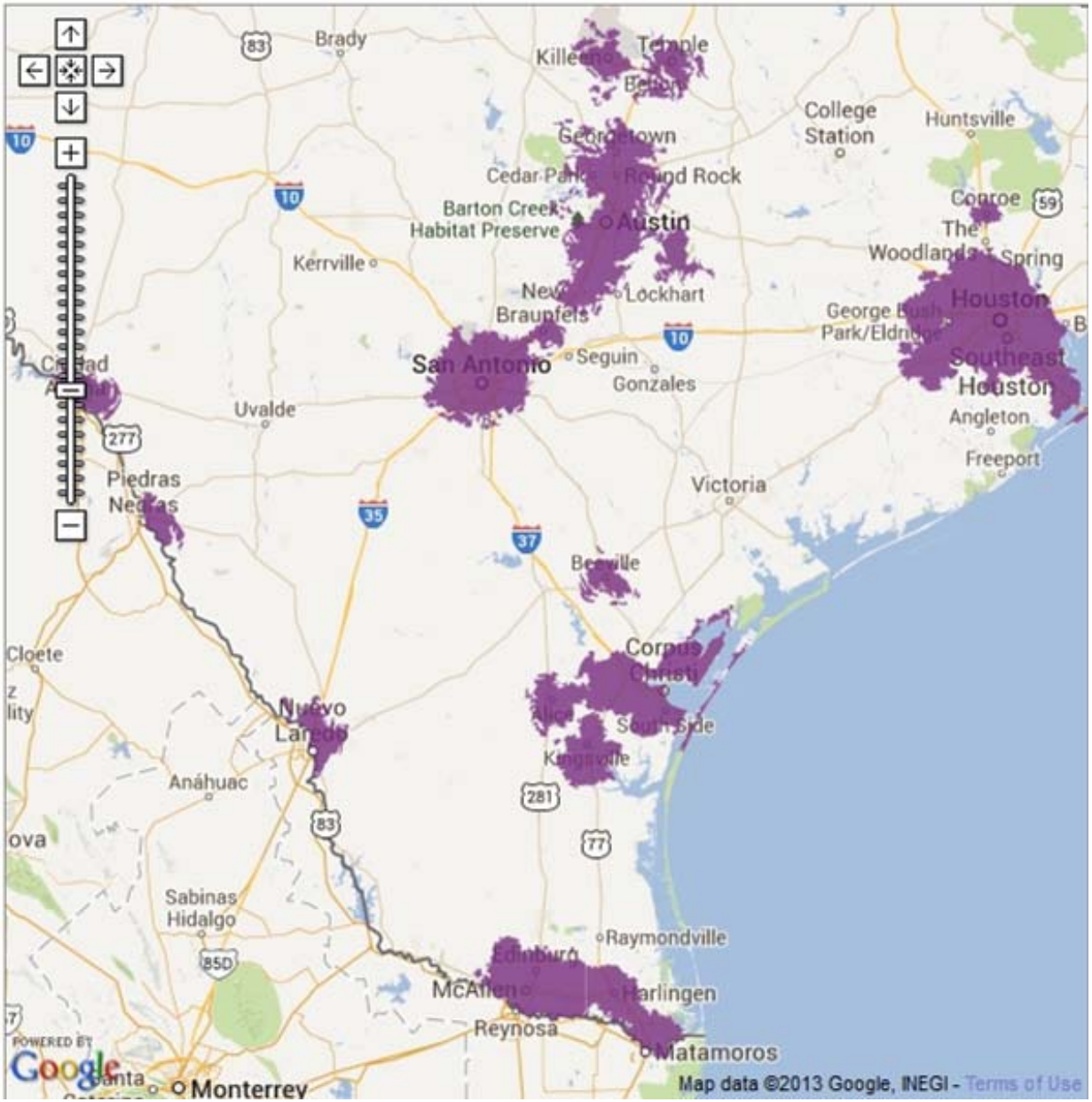
Select the coverage type to display

- Talk & Text Coverage
- 3G Data Coverage
- 4G LTE Data Coverage

Cricket 4G LTE Data Coverage
(4G device required for 4G LTE service)

Partner 4G LTE Data Coverage

No Coverage



search cricket coverage

My home zip code: 78248 (Change)

Check coverage for a specific location:

Street:

City: San Antonio State: TX Zip: 78248

show coverage

coverage map legend print map

Select the coverage type to display

Talk & Text Coverage

3G Data Coverage

- Cricket 3G Data Coverage
- Partner 3G Data Coverage
- Additional Partner Data Coverage (Phones only)
- No Coverage

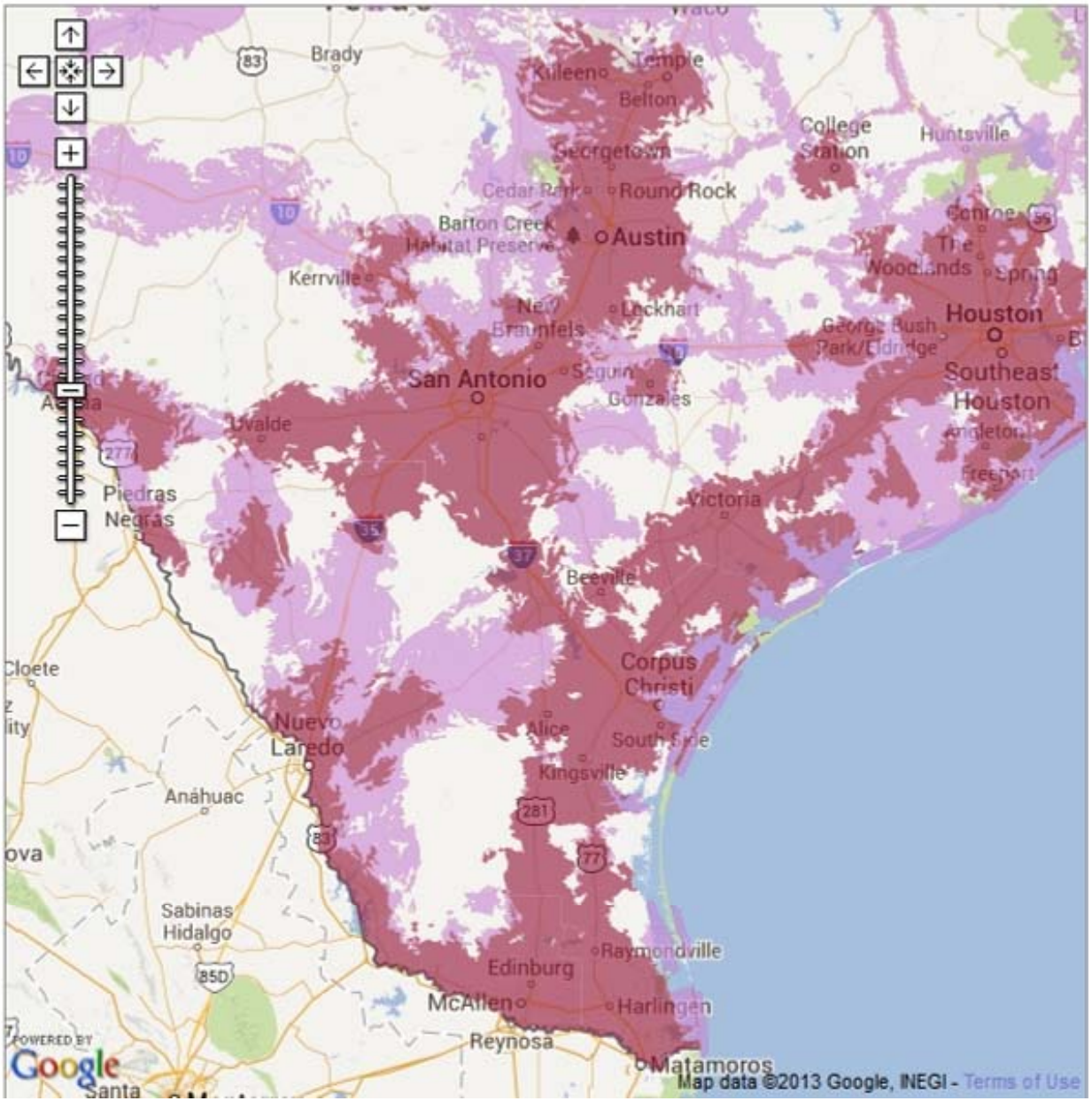


Exhibit J

MetroPCS, Leap to launch free roaming on each other's networks

November 7 2008 - 1:20 pm EDT | Allie Winter and Mike Dano | RCR Wireless News

A coverage map from Leap shows its Cricket service markets as well as future markets and roaming partner markets. Click here for a larger version.

MetroPCS Communications Inc. and Leap Wireless International Inc. will offer free roaming onto each other's networks, a move stemming from a reciprocal roaming agreement signed in September by the two rivals.

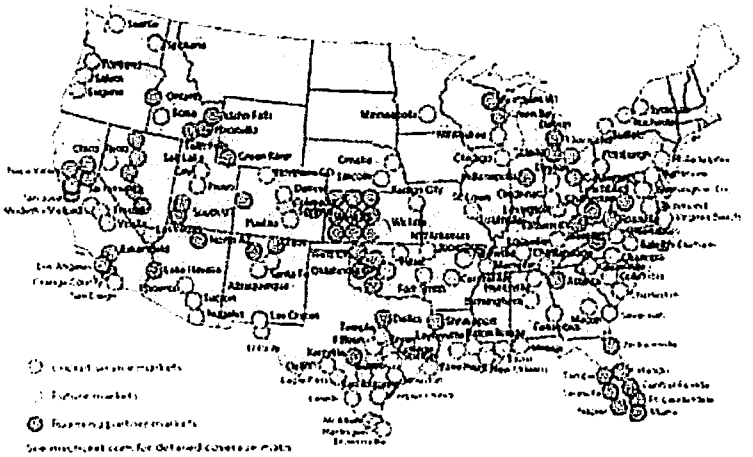
Leap's markets will be free to MetroPCS customers signed up for the carrier's $45- and $50-per-month service plans, and can be added to other plans for $5 per month. MetroPCS' markets will be free to Leap customers on plans above the $45-per-month point, and an extra $5 for plans at or below that point.

"This offering is a major benefit and value to consumers. It takes our existing predictable, affordable wireless service platform and extends it to our customers nationwide," said Roger Linquist, chairman, president and CEO of MetroPCS. "Our customers can now seamlessly use their MetroPCS wireless service while they travel throughout the expanded service area."

MetroPCS said the deal covers 300 markets. A Leap spokesperson cautioned that the carrier's roaming agreements would not extend to MetroPCS customers.

However, the Associated Press pointed out the plans don't cover major markets where neither MetroPCS nor Leap offers service, including New York, Boston, Chicago and Washington, D.C.

But Leap and MetroPCS are working to broaden their coverage. MetroPCS plans Boston and New York launches next year, while Leap Wireless International Inc., which is busy trying to double its covered pops by 2010.



Article modified Nov. 7 to include information from Leap.

REDACTED - FOR PUBLIC INSPECTION

An Analysis of Competitive Effects and Consequences for Consumers and Other Stakeholders from the Proposed Acquisition of Leap Wireless by AT&T

Information Age Economics
4530 Dexter Street, N.W.
Washington, D.C. 20007

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Martyn Roetter, D. Phil, mroetter@gmail.com,(617) 216-1988

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Summary

We have reviewed and analyzed Dr. Mark Israel's report, "An Economic Analysis of Competitive Effects and Consumer Benefits from the Proposed Acquisition of Leap Wireless by AT&T", which has been submitted by AT&T in support of its proposed acquisition of Leap Wireless to the Federal Communications Commission (FCC) in Docket 13-193.

We have also reviewed and analyzed several related documents filed by AT&T in this Docket, along with material from a wide variety of sources that we have found to be relevant to the issues raised by this proposed business transaction that will result in additional consolidation of the wireless sector of the nation's vital and burgeoning telecommunications-information-entertainment (T-I-E) ecosystem.

The issues documented in this IAE Report include fundamental and urgent matters of public policy and the public interest, the future competitiveness (or lack thereof) of the U.S. wireless market, and the benefits available to consumers of wireless services.

The negative consequences stemming from this proposed deal, if approved, extend far beyond the Leap Wireless customers, who will be directly and immediately affected by this transaction.

Dr. Israel's report concludes: *"Significant adverse competitive effects are unlikely and the transaction will result in the kinds of efficiencies that directly benefit consumers. As such, based on the evidence I have reviewed to date, I conclude that the proposed merger is procompetitive and in the public interest."*[1]

We find that this conclusion is completely wrong, and is not even justified by the evidence and analyses in Dr. Israel's report. The evidence and analyses that we provide in this IAE research report factually document and support the opposite conclusion, i.e., that the proposed merger will have several severe and disturbing adverse competitive effects and is therefore certainly NOT in the public interest.

We have found that Dr. Israel's conclusion relies on:

- Faulty logic in his approach;
- Tendentious and unsupported interpretations of selective data; and
- The omission of substantial critical factors that will determine the consequences of this transaction if it is allowed to proceed.

Among the errors and omissions in Dr. Israel's report are the:

1. **Finding that AT&T and Leap are not close competitors.** This finding is based on a distorted interpretation of porting data and an assertion contradicting a basic precept of competitive business strategy that the differentiation between AT&T's and Leap's products means that they do not

[1] This report can be found on the FCC website at http://apps.fcc.gov/ecfs/document/view?id=7520937366

compete strongly with each other.[2] The products of these two operators are more correctly viewed as *substitute services* with a positive cross-elasticity of demand.

2. **Argument that Leap is doomed to failure because of its spectrum-poor position and its financial weakness.** This argument contradicts AT&T's position in other FCC Dockets that there is no harmful impact on competition if one or two operators are allowed to acquire much more spectrum than others. This argument is an example of the fallacy of the self-fulfilling prophecy.[3]
3. **Agreement with the claims and positions of AT&T about improved efficiencies.** These efficiencies will allegedly result from the combination of Leap's and AT&T's assets and facilities. Dr. Israel expresses his agreement in his footnote 64 referring to accompanying Declarations by AT&T executives, *" At this point, I have not conducted an independent economic analysis of the statements made in these Declarations. I have reviewed the Declarations to confirm that the statements make sense as a matter of economics and based on my experience in mobile wireless transactions. Such statements by experienced business executives are the sort of evidence on which economists commonly rely."* However, in previous work sponsored by AT&T, Dr. Israel has demonstrated that he is ignorant of the fundamentals of network economics. Therefore, his opinions in this arena have no credibility[4]. AT&T, the sponsor of these previous reports, did not call attention to Dr. Israel's and his co-authors' elementary mistakes before filing them. This failure speaks volumes about AT&T's disregard for the facts in the filings it submits to the FCC. After all, this large network operator employs many experts in network economics who must be aware of these facts.
4. **"Blinkered" perspective of looking at the Leap transaction as an isolated or one-off event.** This assessment ignores the cumulative and combined impact of this transaction with other recent and ongoing initiatives

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[2] Dr. Israel seems unaware of the fact known to the vast majority of business executives and consultants that product differentiation (thanks to the process of innovation applied along dimensions such as features, design, and user interfaces) is one of the most important, although not the only, ways in which competitors strive to gain an advantage over their rivals in a marketplace.

[3] Robert K. Merton, *The Antioch Review* 8:2 (Summer 1948), 193-210:
"The self-fulfilling prophecy is, in the beginning, a false definition of the situation evoking a new behavior which makes the originally false conception come true [thereby perpetuating] a reign of error. For the prophet will cite the actual course of events as proof [of being] right from the beginning. Such are the perversities of social logic."

[4] Dr. Israel's ignorance was exposed in an IAE analysis - http://apps.fcc.gov/ecfs/document/view?id=7520926985 (see p.10-13, The Extraordinary Case of the "Economists Submissions" and Appendix B) - of reports he co-authored that were submitted by AT&T in FCC Docket 13-135 in June 2013. Neither he nor AT&T has to the best of our knowledge as of this writing (September 6th, 2013) rebutted this analysis since it was filed on July 1st, 2013.

by AT&T. It also takes no account of how AT&T will exploit Leap's assets with substantial anti-competitive consequences built into its known plans for the introduction of new technology in the emerging LTE-dominated wireless landscape.

5. **Role of non-interoperability in AT&T's current and planned LTE deployments.** Leap's customers will be migrated to these LTE networks but non-interoperability is not even mentioned let alone analyzed by Dr. Israel. However, the contents of multiple filings by several U.S. operators and others in FCC Docket 12-69 have demonstrated that the non-interoperability, introduced unilaterally by AT&T, has already caused significant harm to competition in the U.S. wireless market. In the near future, the scope of the adverse consequences of this violation of a basic precept in U.S. telecommunications sector for almost 80 years, will spread throughout the U.S. economy[5] unless it is rolled back, and further moves by AT&T of any kind to expand its reach, such as through this transaction with Leap Wireless, are blocked. This finding is not materially altered by the proposed Interoperability deal and non-enforceable conditional commitments announced by AT&T on September 10, 2013, while this report was being prepared[6].

The analysis and evidence reported by IAE demonstrate that the proposed acquisition of Leap Wireless is part and parcel of AT&T's long term, well-established, systematic strategy for pursuing anti-competitive actions that unfairly harm other operators and consumers. These actions are creating an increasingly solid silo or wall around AT&T's customers that severely injures their interests. It also damages the public interest of sustaining an effectively competitive wireless market in the U.S.

The dire consequences of this proposed business transaction extend well beyond their immediate impact on the relatively small number of Leap customers. All of these facts and consequences must be considered and assessed within the broad, i.e., macro, context of the momentum behind an increasing number of incremental adverse changes in the overall competitive landscape of the U.S. wireless sector and growing neglect of the public interest that are being fueled by AT&T's strategy, along with multiple synergistic initiatives. Their cumulative and lasting impact will be much greater than the sum of the short term or immediate effects of each individual transaction.

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[5] Information Age Economics, Reply Comments, FCC Dockets 13-135 and 12-69, "The Erosion of Effective Competition through Non-Interoperability," July 25, 2013, http://apps.fcc.gov/ecfs/document/view?id=7520933726

[6] Letter from AT&T to the Honorable Mignon Clyburn, Chairwoman Federal Communications Commission, September 10, 2013, http://apps.fcc.gov/ecfs/document/view?id=7520942822

1. AT&T and Leap – AT&T and T-Mobile Redux

The "rationale" presented with respect to Leap's "problems" and lack of a way forward, absent its acquisition by AT&T, are similar in content and tone to those that AT&T submitted to the FCC and the Department of Justice (DOJ) in an attempt to justify its proposed and later withdrawn acquisition of T-Mobile USA in 2011. In its filings at that time, AT&T argued that T-Mobile was not one of its major competitors, while at the same time, and ironically in the context of today's proposed transaction, Leap Wireless was identified as one example of the strong competition AT&T was facing, and would still confront, after acquiring T-Mobile[7].

The FCC released a Staff Report on the AT&T/T-Mobile transaction in late 2011 concluding that AT&T and T-Mobile "have failed to meet their burden of demonstrating that the competitive harms that would result from the proposed transaction are outweighed by the claimed benefits". The FCC staff report also said, "The potential loss [of T-Mobile as a] competitive force in the market is a cause for serious concern."[8]

It became evident in the review of the proposed AT&T/T-Mobile transaction in 2011 that several of the ills or weaknesses from which T-Mobile was suffering that allegedly made its acquisition by AT&T the sole viable option were, in fact, caused by the anti-competitive actions and behavior of AT&T. In other words, as in the fallacy of the self-fulfilling prophecy, AT&T was arguing that in a bad situation that it had created its initiative to overcome the problems that had arisen was therefore justified, and was moreover the only possible solution

AT&T withdrew its application to acquire T-Mobile in November 2011 because of evidence that its claims about the benefits to customers and the absence of harmful competitive consequences were not factually supported. The proposed AT&T/Leap deal has close parallels with AT&T's statements and assertions about its proposed T-Mobile transaction, and is similarly devoid of a factual foundation.

IAE has previously identified, and filed before the FCC and the DOJ, the opportunities for T-Mobile as an independent competitor that were completely ignored by AT&T.[9] Several of the elements of the opportunities that we identified in

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[7] "Acquisition of T-Mobile USA, Inc. by AT&T Inc.: Description of Transaction, Public Interest Showing and Related Demonstrations," http://apps.fcc.gov/ecfs/document/view?id=7021240421; see especially Chapter IA Section 3 on AT&T's depiction of T-Mobile's alleged situation and the multiple references to Leap as a competitor.

[8] http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-11-1955A2.pdf; see also http://transition.fcc.gov/transaction/DA-11-1955.pdf

[9] "T-Mobile USA: A Better Future Without AT&T," Bloomberg BNA Daily Report for Executives, October 6, 2011.

the fall of 2011 have been confirmed by subsequent initiatives undertaken by an independent T-Mobile in 2012 and 2103.[10]

Events since AT&T withdrew its application to acquire T-Mobile have proved that alternatives presented at the time by IAE and others have enabled T-Mobile to develop more powerful and innovative service offerings that would not have been launched into the U.S. wireless market if T-Mobile had lost its independence. These developments confirm that the assertions and arguments presented by AT&T in its attempt to justify its proposed acquisition of T-Mobile were invalid, as clearly and unequivocally demonstrated by opponents to the proposed AT&T/T-Mobile deal in 2011, as well as in the FCC Staff Report referenced earlier.

1.1 Leap and AT&T: From Opponent to Accomplice

As noted, there are striking parallels between the assertions presented by AT&T in its attempt to justify its proposed acquisition of T-Mobile in 2011 and those it now advances to acquire Leap Wireless. Furthermore, there are significant similarities between the problems confronted by Leap Wireless and T-Mobile, and the criticisms of AT&T made by both of them -- prior to AT&T's offers to pay large sums in order to acquire them.[11]

Leap Wireless' concerns about AT&T were expressed in its Petition to Deny in FCC Docket 11-65[12]. Of particular and specific continuing relevance are Leap's comments about AT&T's behavior and attitudes toward roaming arrangements with other operators, its own dependence on AT&T for backhaul facilities, and the extent to which AT&T has the power to limit and/or discourage the development of the smart devices that Leap and other wireless services providers need to offer their customers in order to be competitive.

On p. 20-21 in this Petition Leap pointed out:

"As an initial matter, the Commission found in its recent data roaming order[13] that AT&T already exercises market power and engages in exclusionary conduct with regard to reaching data roaming agreements. The Commission observed that "AT&T has largely refused to negotiate domestic 3G roaming arrangements," and noted that

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[10] See for example: http://www.creditwritedowns.com/2013/07/the-impact-of-t-mobiles-new-strategy-on-tmt.html; http://news.cnet.com/8301-1023_3-57593104-93/t-mobile-flips-on-lte-switch-in-116-cities-total/

[11] AT&T's bids were $39 billion for T-Mobile, including $25 billion in cash, and amount to some $15 per share in cash for Leap Wireless, about double its share value before the bid was announced.

[12] Petition to Deny of Leap Wireless International, Inc. and Cricket Communications, Inc. FCC Docket 11-65, http://apps.fcc.gov/ecfs/document/view?id=7021681260

[13] *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Second Report and Order, WT Docket No.05-265, ¶¶ 1, 13 (April 7, 2011) ("*Data Roaming Order*").

AT&T did not enter into a single 3G roaming agreement until March 2011. The Commission also found that it was "unlikely" that AT&T (or Verizon) would be willing to offer roaming arrangements for 4G LTE networks "at any time in the near future." T-Mobile itself acknowledged that, even prior to this transaction, existing industry consolidation had led to conditions in which "AT&T, the dominant provider of roaming services for the GSM technology platform, now has the incentive and the ability to resist entering into reasonable data roaming agreements. ***It is a classic case of market failure…"***[14] *Thus, just weeks before the merger announcement, T-Mobile agreed that AT&T abuses its market power by denying smaller providers roaming rights. T-Mobile appears to have changed its tune after the announcement of this proposed acquisition, but there is no serious question that a fully independent T-Mobile shares the concerns of Leap and others in the industry."*

In addition, on p.24 (Section IIC) of its Petition, Leap discussed how the proposed acquisition would increase AT&T's market power in the provision of Special Access Services used to provide backhaul, noting that Leap itself depended on AT&T for 55% of its last mile access. It argued that AT&T already had sufficient market power in backhaul services that it could charge "many multiples of cost" for access to its network.

In the same Section IIC, Leap identified a third anti-competitive set of actions of AT&T, namely its exploitation of the availability and interoperability of mobile devices that inhibits other operators, such as Leap, from gaining access in a timely manner to a competitive portfolio of smart devices. A past example of this behavior by AT&T was its initially exclusive contract with Apple for the supply of iPhones. T-Mobile pointed to the absence of the iPhone in its portfolio of devices as one source of its competitive difficulties[15]. The iPhone contract is an example of how AT&T has unfairly created problems for competitors that it then claims, in a self-fulfilling mode, can only be solved by its acquisition of yet another competitor.

Recently, and in a more subtle tactic adapted to the LTE era, based on unauthorized non-interoperability introduced by AT&T in the 700 MHz Lower Band, smart devices that are carrier-specific are proliferating. Carrier-specific devices put smaller operators at a disadvantage in obtaining support from device vendors and chipset suppliers for the products they need. It also limits economies of scale in product development and manufacture that reduce the costs of devices to operators and users.

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[14] T-Mobile USA, Inc., Notice of Ex Parte, Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, WT Docket No. 05-265, at 4 (filed Mar. 10, 2011) (emphasis added).

[15] T-Mobile blames lack of iPhone for deactivations, http://www.tuaw.com/2012/02/23/t-mobile-blames-lack-of-iphone-for-deactivations/

Now, like T-Mobile when offered a large sum of money, Leap Wireless is ironically similarly and with no justification changing its tune. This abrupt change is evident in the Hutcheson Declaration[16], even though the observations Leap presented in its 2011 Petition about AT&T's harmful actions and behavior are as valid today as they were then. In this Declaration Leap's Chief Executive Officer presents the same incorrect interpretation of porting data as Dr. Israel (see Section 3 below), within a litany of Leap's woes that omits any reference to AT&T's actions that Leap has been strongly criticizing as one of the causes of its difficulties. He also offers the previously unannounced revelation that neither AT&T nor Verizon, the two largest U.S. wireless services providers, are among its most significant competitors.

Further evidence of Leap Wireless' "about face" since the proposed acquisition bid by AT&T from its former assessments of the future competitive dynamics of the U.S. wireless market and the role of AT&T is found in its filing in FCC Docket 12-269 (Spectrum Aggregation) in January 2013[17]. Leap argued then that the FCC should adopt a new approach to its spectrum screen based on band-specific characteristics, such as the economic benefits of sub 1 GHz frequencies for network deployments in rural areas.

AT&T that has stated repeatedly that a Hz is a Hz, regardless of band, opposes this recent pre-bid Leap opinion. Therefore, according to AT&T there should not be any special conditions or limits applied to an operator's holdings of sub 1 GHz frequencies distinct from the total size of its portfolio of spectrum licenses. AT&T's position is, of course, supported by Dr. Israel as discussed later in Section 8, where it is also shown that his support reflects his lack of awareness (and AT&T's disregard in this context) of the fundamentals of network engineering economics.

Leap's Reply Comments in Docket 12-269 conclude: "The Commission should amend its screen to provide a more nuanced analysis of spectrum bands by weighting spectrum bands to account for differences in propagation characteristics and device ecosystems." The reference to device ecosystems is pertinent to consideration of the role of non-interoperable 700 MHz Band Class 17 that was introduced unilaterally by AT&T, and has severely hampered the development of a device ecosystem for Band Class 12.

The proposed acquisition of Leap Wireless by AT&T would therefore remove a voice in favor of regulations about spectrum holdings that are strenuously opposed by AT&T. The FCC's future decisions with regard to spectrum aggregation will have significant competitive effects on the U.S. wireless market in influencing the additional spectrum that competing operators will be able to acquire. Absent any

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[16] Declaration of S. Douglas Hutcheson (Chief Executive Officer of Leap Wireless), http://apps.fcc.gov/ecfs/document/view?id=7520937383.
[17] Reply Comments of Leap Wireless International, Inc. and Cricket Communications, Inc., http://apps.fcc.gov/ecfs/document/view?id=7022100066

limits on spectrum holdings, the most financially powerful operators will be able to accumulate additional spectrum by outbidding other operators. As a result size will become the sole criterion for competitive and anticompetitive success, as less wealthy operators will find it increasingly difficult to keep up with demands for increased capacity and speed. Their competitive ability will be hobbled, regardless of how innovative and operationally efficient and superior they may be in other aspects of the wireless business.

Yet Dr. Israel has completely ignored this harmful anticompetitive effect of the AT&T/Leap Wireless transaction resulting from weakening of the opposition to AT&T's strenuous efforts to ensure that it can acquire additional spectrum licenses without limitation, even if that leaves other operators in an inevitably uncompetitive spectrum-poor situation.

1.2 Perspectives on Leap's Business: Leap Wireless versus AT&T

The perspective provided on Leap Wireless in the Applicants' DESCRIPTION OF TRANSACTION, PUBLIC INTEREST SHOWING AND RELATED DEMONSTRATIONS[18] paints a bleak picture of Leap's prospects, as the equivalent filing did for T-Mobile in the proposed AT&T/T-Mobile transaction. For example, p.11 of this document states:

"Within its facilities-based footprint, Leap has trailed behind the nationwide providers in upgrading to 4G technology. Leap has deployed LTE technology in only 11 metropolitan areas covering approximately 21 million people and offers only slower, less spectrally efficient 3G CDMA EVDO elsewhere to 65 percent of its subscribers. Moreover, even where Leap has deployed LTE, it has done so in less spectrally efficient narrow-bandwidth deployments- with the majority being 3x3 MHz, and none larger than 5x5 MHz- that provide substantially slower throughput speeds than its LTE competitors. The high cost of LTE deployment, coupled with Leap's limited spectrum depth, have constrained both Leap's ability to deploy LTE services across its network footprint and to provide the data throughput speeds required to remain competitive."

However, although Leap does not have close to nationwide coverage of its own network facilities, it does position itself as a national, not merely a limited regional competitor, in its marketing material and also in its reports to investors. It should also be noted that Leap began its launch and commercialization of LTE service in its AWS frequencies more rapidly and earlier than AT&T did, as did Metro PCS[19]. In this

[18] AT&T, Description of Transaction, Public Interest Showing and Related Demonstrations, http://apps.fcc.gov/ecfs/document/view?id=7520937375

[19] Leap Wireless International, Inc.: Leap Continues Transition to 4G LTE With 2nd Commercial Market Launch in its Cricket Las Vegas Market, Oct. 17, 2012, http://www.4-traders.com/LEAP-WIRELESS-INTERNATION-9862/news/Leap-Wireless-International-Inc--Leap-Continues-Transition-to-4G-LTE-With-2nd-Commercial-Market-L-15390261/

respect, these Tier 2 operators demonstrated that they are more aggressive about exploiting additional spectrum that they acquired and have used it more expeditiously to create value for themselves and customers, than has AT&T.

Examples of Leap's self-characterization include:

A. *Today Cricket is a nationwide carrier with a nationwide footprint, serving approximately 5.5 million customers across the United States. With a diverse product portfolio and national retail distribution, we are transforming our business, brand, operations and culture to offer customers value innovation like never before. We are leveraging our industry-leading cost structure to introduce lower-priced, higher-value service plans. We have built a robust 3G network that covers nearly 95 million potential customers, and we supplement that network with roaming agreements that provide high-quality nationwide network coverage for covering nearly 290 million Americans. Our growing distribution channels now include over 4,000 retail store and dealer locations, approximately 5,000 nationwide national retail locations and a growing web presence*[20]*;* and

B. ***About Leap***
Leap provides innovative, high-value wireless services to a young and ethnically diverse customer base. With the value of unlimited wireless services as the foundation of its business, Leap pioneered its Cricket service. Cricket products and services are available nationwide through company-owned stores, dealers, national retailers and at MyCricket.com. Through its affordable, flat-rate service plans, Cricket offers customers a choice of unlimited voice, text, data and mobile Web services. Headquartered in San Diego, Calif., Leap is traded on the NASDAQ Global Select Market under the ticker symbol "LEAP." For more information, please visit www.leapwireless.com[21]*.*

In its 2012 Annual Report, Leap states on p.2 of its 10-K, "*As of December 31, 2012, Cricket service was offered in 48 states and the District of Columbia across an extended area covering approximately 292 million POPs. As of December 31, 2012, we had approximately 5.3 million customers, and we owned wireless licenses covering an aggregate of approximately 136.7 million POPs (adjusted to eliminate duplication from overlapping licenses). The combined network footprint in our operating markets covered approximately 96.2 million POPs as of December 31, 2012. The licenses we own provide an average of 23 MHz of coverage in our operating markets. In addition to our Cricket network footprint, we have entered into roaming relationships with other wireless carriers that enable us to offer Cricket customers nationwide voice and data roaming services over an extended service area. We have also entered into a wholesale agreement, which we use to offer Cricket services in nationwide retailers outside of our current network footprint.*"

On p.43 of the 2012 10-K Leap describes its competitors as follows, *"In general, we compete with national facilities-based wireless providers and their prepaid affiliates or brands, local and regional carriers, non-facilities based MVNOs, VoIP service*

[20] http://www.leapwireless.com/who-we-are/best-prepaid-wireless
[21] http://www.prnewswire.com/news-releases/leap-announces-closing-of-spectrum-transactions-with-verizon-wireless-167732065.htm

providers, traditional landline service providers, cable companies and mobile satellite service providers."

Until AT&T's bid, Leap Wireless did not think of itself, and was not operating as, a regional competitor with marketing and sales activities that addressed a minority of the U.S. population. The main elements of Leap's strategic intent and plans, prior to the AT&T bid, are shown in Appendix A, reproduced from the company's Q1 2013 Earnings Presentation, and indicating its plans to expand substantially the LTE coverage it could offer its customers.

2. Scope and Consequences of AT&T's Proposed Acquisition of Leap Wireless

The implications of the proposed acquisition of Leap Wireless extend well beyond the number of U.S. customers (Leap's customer base) that will be affected immediately and directly. Evidence from the past, and ongoing behavior of AT&T as well as its foreseeable future plans, demonstrate that the acquisition of Leap Wireless will amplify the impact of AT&T's broadly based anti-competitive strategy that will:

- Contaminate AT&T's entire portfolio of LTE spectrum (that will be augmented by Leap's spectrum if this transaction is approved) and deployments over the next few years with non-interoperability through the introduction of carrier aggregation[22] that will combine Band Class 17 with all its other interoperable bands (e.g. AWS, PCS and 850 MHz), and will launch a growing number of carrier-specific devices (see Appendix C). These devices will soon include some that are capable of carrier aggregation with benefits in terms of higher peak and average speed that will only be available to customers when used on AT&T's network. Customers will only be able to receive comparable carrier aggregation-dependent benefits on other operators' networks if they acquire a different device[23]. Concurrently, a continued lack of scale for Band 12 in the 700 MHz Band (Blocks A, B and C and not just the Blocks B and C of Band 17), will adversely affect the timing and availability of chipsets and devices that support carrier aggregation including Band 12, if interoperability is not mandated and enforced by the FCC. The number of carrier-specific devices that are presented to customers will proliferate, which contradicts Dr. Israel's perspective about the decline in handsets available exclusively on particular networks;

[22] Carrier aggregation is a technique to increase the effective bandwidth of a network deployment by combining frequencies held by an operator – either non-contiguous within the same band (intra-band) or between different bands (inter-band) – thereby enabling increases in the bit rates offered to customers, see for example, http://www.3gpp.org/Carrier-Aggregation-explained

[23] In contrast customers can use the same device (a Windows-based PC or tablet or a Macintosh computer or tablet) on WHATEVER fixed access network they subscribe to from ANY telephone or cable company.

- Perpetuate and extend a reign of error, in which AT&T damages much smaller competitors by its own actions, and subsequently, in the context of a self-fulfilling prophecy, asserts before the FCC (and the DOJ) that it is the only possible savior of these competitors, after they have been weakened financially and operationally as a direct result of these anti-competitive practices and anti-public interest activities.

AT&T's recent announcement of an LTE interoperability deal does not materially change the situation with respect to the impact of non-interoperability on competition in the U.S. wireless market and the public interest. We have established[24] that this announcement by AT&T, while welcome, thanks to the new leadership of FCC Chairwoman Clyburn, as an initial breach in its resistance for the past three years or more to proposals to restore interoperability, is nevertheless not going to lead to any noticeable movement over the next few years with respect to the restoration of nationwide interoperability, or preventing the extensive expansion of non-interoperability.

IAE's review of the commitments made by AT&T[25] makes it clear that actual implementation:

- Will be up to the "sole discretion" (p. 3 of Letter) of AT&T;
- Foresees a timeline during which the number of non-interoperable devices in service in the U.S. will expand by many tens of millions of devices[26];
- Does not inhibit or even mention the further expansion of non-interoperability through the introduction of carrier aggregation (see Appendix C), that will likely be deployed beginning in 2014-2015, and will provide further opportunities for the launch of new devices that are not compatible with Band 12.

It is inappropriate and unprecedented for a matter of such fundamental importance for the future of the U.S. wireless (and T-I-E) market that affects all U.S. consumers to be left to AT&T and a subset of smaller operators to decide what should be done, not to the FCC, while completely excluding the views of many other interested parties. This situation is reminiscent of the initial introduction of non-interoperability in the 700 MHz Lower Band (an issue of concern exclusively to the U.S. and prospectively to no other major country except Canada) that was introduced through the international standards body 3GPP at a time when among U.S. operators ONLY AT&T and Verizon were participants.

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[24] IAE Comment and Letter, http://apps.fcc.gov/ecfs/document/view?id=7520942933 and http://apps.fcc.gov/ecfs/document/view?id=7520943043

[25] Ibid. Letter from AT&T to Chairwoman Mignon Clyburn, September 10, 2013

[26] One forecast predicts there will be over 260 million LTE subscriptions in the U.S. by 2017 (http://www.fiercewireless.com/story/report-us-lte-subscribers-will-make-70-connections-2017/2013-06-11), so it is not hard to envisage a number of well over 100 million non-interoperable devices in service during 2015, combining the customer bases of AT&T and Verizon

Furthermore, approval of the AT&T/Leap transaction implicitly requires agreement with irreconcilable and inconsistent positions of AT&T that are endorsed by Dr. Israel. On one hand, AT&T asserts that only size matters, through its claims about the efficiencies of large players, the limitations of small spectrum portfolios, and other economies of scale advantages.[27] This argument points to an inevitable outcome in the U.S. wireless market in which only a handful of operators, not one as small as Leap, can survive.

On the other hand, AT&T has been advocating that there should be no effective regulation of the few remaining survivors[28], who will then be free to do whatever they please that lies in their self-interest, regardless of any other legitimate and important public interest. Yet these operators depend heavily on publicly owned resources, such as scarce spectrum and rights-of-way, and control essential facilities that a very large number of small and entrepreneurial, as well as large businesses and institutions depend, as do all of us in our working and social lives.

The stewardship of public resources for the benefit of the public interest requires effective involvement of forces with explicit responsibilities to the public along with the power that can be exercised on their behalf. It is both risky and undesirable to place such enormous power with no independent supervision into the hands of a small number of huge network operators, including AT&T. AT&T has provided ample evidence of the harmful actions, and behavior, that it considers to be appropriate and entirely within its control and discretion. AT&T has been pursuing such actions vigorously to the detriment of the legitimate interests of smaller competitors, third party services providers, and customers.

Approval of this transaction would strengthen the anti-competitive hand of AT&T, as would have occurred if it had acquired T-Mobile in 2011. AT&T is a prime actor in eroding competitiveness in the U.S. wireless market, hurting the public interest, while violating a basic and long standing public policy precept of U.S. communications law and public policy - network interoperability - even though legislatively and by regulation it is mandated to act as a responsible steward of substantial publicly-owned resources!

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[27] Although simultaneously AT&T argues that NO LIMITS should be placed on the quantities of spectrum it can acquire that will have no harmful effects, even though, in the absence of such limits, the ability of smaller operators, with fewer financial resources, will ensure that they cannot acquire the spectrum they need to remain competitive. It might as well be argued that huge agricultural combines should be allowed to pay for and consume as much water as they want, even if as a result smaller farmers and other less wealthy users of water were forced to sell out to them or cease operation.

[28] "Telecoms want FCC out of broadband regulation,"http://seattletimes.com/html/businesstechnology/2021812378_fccbroadbandxml.html

3. The Misinterpretation of Porting Data

Dr. Israel says that he found relatively few Leap customers, among those who port their numbers to another operator, who select AT&T as opposed to other operators, such as Verizon, Sprint, and T-Mobile[29] Hence, according to him, Leap is not a close competitor to AT&T. Yet AT&T admits that these other operators are its competitors! Dr. Israel evidently misunderstands the very essence of competition in the wireless service market. An obvious, and more plausible, explanation for this decision on the part of Leap's former customers is that they have tended to find the services offered by AT&T's competitors better suited to their needs than are those of AT&T's. It is counter intuitive to claim that Leap is not a competitor to AT&T because its former customers tend to select AT&T's competitors when they migrate, as if Leap were somehow competing with all of AT&T's competitors, with the exception of AT&T itself.

In the same illogical and inconsistent vein, Dr. Israel emphasizes that the proper market to consider in reviewing the AT&T/Leap transaction is a **single** or all-wireless market with no distinction between "value" and "premium" services. In other words, both Leap's and AT&T's wireless services are competing in the same market. Yet, as noted, Dr. Israel claims simultaneously, thereby contradicting his own premise, that there are no significant adverse competitive effects arising from this transaction, because these two operators are competing in effectively **separate** markets as distant competitors.

4. Substitute Services of Leap Wireless and AT&T

AT&T's (and Dr. Israel's) assertion that Leap Wireless and AT&T are not close competitors misrepresents the competitive relationship between the services offered by these two currently competitive operators. First, Leap Wireless' prepaid (no contract) offerings compete with the prepaid offerings of AT&T itself (GoPhone and its new Aio service) as well as with the prepaid services supplied by MVNOs using AT&T's facilities among others, most notably Tracfone[30]. AT&T has admitted that its GoPhone products are not very competitive compared to other prepaid offerings, including Leap's[31]. This factor alone (see preceding Section 3) helps explain why Dr. Israel's finding that Leap's prepaid subscribers who port their mobile service to another provider, and are therefore presumably looking for alternative prepaid offers, even if they also consider switching to a post paid subscription, would tend to choose AT&T over other competitors in a proportion

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[30] Tracfone is owned by the multinational, Mexico-based operator America Movil, with whom AT&T has a long standing relationship at the highest level, see for example,
http://www.reuters.com/article/2013/09/18/us-att-americamovil-idUSBRE98H02Z20130918

[31] AT&T, Description of Transaction, Public Interest Showing and Related Demonstrations, ibid. (p.12),

that is smaller than AT&T's total market share in the CMAs covered in this comparison.

Second, Leap Wireless's prepaid (no contract) products and AT&T's postpaid (contract) products are an instance of s**ubstitute services**. As a result of changed conditions, e.g., in relative prices and/or in the incomes or other circumstances of consumers, these goods may replace, or be substitutes for, each other. A substitute service exhibits a positive cross elasticity of demand, in that demand for one service is increased when the price of another service is increased. Conversely, as substitutes for each other, the demand for one service is decreased when the price of another closely related service is decreased.

The relative costs to the customer of using one service versus its competitive substitute play a major role in determining which one each user chooses to purchase. In the context of the wireless market served by AT&T and Leap Wireless, competition for customers' dollars between the postpaid (contract) and prepaid (no contract) model is intensifying, thereby demonstrating the nature of the relationship of substitute services between these two operators' principal products[32]. The first reference in this footnote contains examples of selected pre- and postpaid products that illustrate the kinds of cost comparisons that knowledgeable consumers make in deciding whether to subscribe to a prepaid or a postpaid service.

AT&T itself has implicitly recognized the trend toward prepaid growth and increased postpaid/prepaid competition and substitutability in its introduction of the prepaid Aio service to add to its existing GoPhone prepaid offer[33]. Moreover, AT&T stated in a filing dated August 20, 2013 that it "…intends to combine the nascent operations of Aio with Leap's existing operations under the Cricket brand name[34]", although as of this writing the operational modalities of this combination are not clear.

Since market evidence and behavior, as well as AT&T's actions, demonstrate that their major products are substitute goods, it is incorrect for AT&T and Dr. Israel to assert that Leap Wireless and AT&T are not competitors. Substitute services (and goods/products) are a well-known and common characterization used by economists. It is perverse logic for AT&T to argue that its admitted weakness in

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[32] "Prepaid or postpaid?: The fight for your cell phone dollars (Smartphones Unlocked)", http://www.cnet.com/8301-17918_1-57547193-85/prepaid-or-postpaid-the-fight-for-your-cell-phone-dollars-smartphones-unlocked/#ixzz2fCIaIN00; "NPD: One-third of U.S. smartphone sales were prepaid in Q1," http://www.fiercewireless.com/story/npd-one-third-us-smartphone-sales-were-prepaid-q1/2013-05-16

[33] AT&T, Description of Transaction, Public Interest Showing and Related Demonstrations, ibid. (p.12), and http://apps.fcc.gov/ecfs/document/view?id=7520939109, (Section V - The Aio Brand Launch),

[34] Letter and Exhibits, http://apps.fcc.gov/ecfs/document/view?id=7520939109, (p.2)

prepaid products and the relatively low porting subscriber proportions between the two operators mean that Leap Wireless is not a close competitor. There is ample evidence that postpaid and prepaid products, while not completely substitutable, are viable and increasingly strong substitutes for each other.

5. AT&T's Role in Weakening Small Competitors, Including Leap Wireless

AT&T has been systematically weakening the ability of smaller operators to compete in the U.S. wireless market through a series of actions (or in some cases failures to act) that violate the precepts or the intent of regulations and public policy as embodied in U.S. communications legislation and regulatory policy for many decades. As noted in Leap's Petition to Deny, filed in FCC Docket 11-65 already referred to, and in many other sources, these actions/inactions include AT&T's:

- Unwillingness to enter into reasonable roaming arrangements;
- Exploitation of its market power over essential facilities to demand high prices from competitors who depend on them;
- Initiatives to secure exclusive supply rights for significant periods of time for some smart devices and/or the introduction of carrier-specific devices; and
- Unilateral introduction of non-interoperability that has reduced the value of, and inhibited the deployment of networks in the 700 MHz Lower Band Block A frequencies acquired by smaller operators in 2008.

AT&T is not alone in this behavior. Given the historical choice of Leap Wireless for CDMA/EVDO technology rather than GSM, the specific or direct impact of AT&T's anti-competitive behavior on Leap, e.g., with respect to roaming, has been less serious than if Leap had been a GSM-based operator. Nevertheless, the absorption of Leap by AT&T would expand AT&T's ability to exercise its harmful influence and assert its market power on all smaller operators, particularly since both CDMA- and GSM-based operators in the U.S. are now converging towards a network environment that will become dominated by a common technology, LTE. As a consequence of this already initiated and rapidly spreading trend to LTE in wireless network deployments, formerly unavailable roaming partners will become potential competitors for roaming arrangements for LTE-based services. More broadly, the distinction or market divide between the CDMA camps and the GSM camps of wireless operators will erode over time, or rather it should do so in an interoperable wireless network environment.

However, as a result of the unilateral introduction of non-interoperability, without requesting the permission of the FCC, more insidious and customer-hostile distinctions, and/or barriers between networks, are emerging, despite the use of a common network technology. These barriers will become more harmful in the future LTE environment of the U.S. wireless market if AT&T is allowed to expand its market power through a series of incremental acquisitions of spectrum and other assets (customer bases) from smaller operators. Cumulatively, these acquisitions

are adding up over time to the creation of a very large silo or walled-in base of customers and spectrum assets protected by the barriers of non-interoperability, along with the historic resistance of AT&T to offer affordable and non-discriminatory roaming arrangements that enable smaller competitors to provide nationwide service to their customers.

Also, as pointed out in a recent filing by the Rural Telecommunications Group (RTG) submitted in multiple FCC Dockets[35], since AT&T procures mobile devices that only operate on Band Class 17 within the 700 MHz Band, its customers are unable to roam on Verizon's LTE networks or on the networks of small, rural or regional competitors. Furthermore, the latter category of competitive carriers continues to experience great difficulty in obtaining the latest and most highly prized mobile devices that include all of the paired spectrum in the 700 MHz Band so that roaming is even possible. The lack of device interoperability in the 700 MHz Band makes LTE data roaming either unavailable or at best severely limited.

AT&T plans to extend the scope of non-interoperability throughout its LTE deployments as it introduces future generations of this network technology, i.e., LTE-Advanced or LTE-A. One of the most important advances specified in LTE-A is the use of carrier aggregation to be able to offer higher peak and average speeds to customers[36]. As outlined in Appendix C, AT&T's involvement in the development of carrier aggregation standards is concentrated on combining its non-interoperable Band Class 17 (covering the 700 MHz Lower Band Block B and C frequencies) with other interoperable bands, including AWS, PCS and 850 MHz. The AWS and PCS bands are particularly important as interoperable LTE bands in the U.S, because all four national operators have PCS licenses and three also have AWS licenses (Sprint is the exception). Furthermore, the AWS band is a major LTE band in Canada and is becoming so throughout most of Latin America (i.e., all of ITU Region 2 in which the U.S. has traditionally set the direction for wireless network deployments) as so-called 4G licenses are awarded.

By following this path of carrier aggregation, AT&T will be able to contaminate its entire spectrum portfolio with unauthorized non-interoperability. It will influence device and chipset vendors to focus their attention on LTE-A-capable devices that include inter-band carrier aggregation incorporating Band Class 17, to the detriment of operators who would like to offer service in Band Class 12.

The dismissive attitude of AT&T toward interoperability, in which it treats this basic precept of the U.S. Communications Sector as subordinate to, and of lower priority

[35] http://apps.fcc.gov/ecfs/document/view?id=7520940503

than, other questions and choices in this economically and socially indispensable and important market[37] is remarkable -- and disturbing.

While Leap is not a major holder of 700 MHz Lower Band Block A licenses[38] (it has one in the Chicago Cellular Market Area, acquired for $204 million in 2012 from Verizon Wireless), at the time it acquired this license it characterized its intended purpose for these frequencies as follows, *"They will provide Cricket with additional spectrum it needs in the Chicago area to expand its service offerings and to deploy LTE network technology, which will allow it to offer improved broadband data services and to continue to compete with other carriers in that market."*[39]

During 2013 Leap Wireless has also filed Comments and Reply Comments in FCC Docket 12-268 (Incentive Auctions)[40]. In these filings Leap expressed its strong support for interoperability, and concerns for the potential extension of non-interoperability to the 600 MHz Band. It also advocated in favor of financial advantages (bidding credits) for smaller operators so as to enable them to compete for new spectrum licenses against the much more financially powerful operators such as AT&T.

At the same time in Dockets 12-268 and 12-269 (Spectrum Aggregation), AT&T has been arguing in favor of the opposite outcomes in its factually challenged assertions about the alleged harms of enforcing interoperability, providing any operator-specific advantages in future auctions of spectrum licenses, and/or imposing spectrum aggregation limits.

Leap's experienced-based positions have thus been diametrically opposed to AT&T's on the critical issues for competition in the U.S. wireless market that are associated with spectrum aggregation and the ability of operators to gain access to new spectrum they need in order to be able to compete in future.

Furthermore, Leap, like other licensees of 700 MHz Lower Band Block A frequencies, has been subject to the barriers created by AT&T's introduction of non-interoperability that severely inhibit the launch of commercial services in these frequencies[41]. These barriers have been amply documented in multiple filings with

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[37] For example, compared to AT&T's efforts to avoid any limits on the quantities of spectrum it can acquire and to deny the economic realities of the competitive benefits of access to a mix of sub 1 GHz and high band frequencies.
[38] Leap (through a wholly owned Cricket subsidiary) was an unsuccessful bidder for 700 MHz licenses in FCC Auction 73 in 2008; it did not benefit from any bidding credits in this auction.
[39] http://assets.fiercemarkets.com/public/mdano/verizonleap.pdf
[40] http://apps.fcc.gov/ecfs/document/view?id=7022112297 and http://apps.fcc.gov/ecfs/document/view?id=7022130259 respectively
[41] As recently as early June, 2013, Leap applied for an extension of the construction milestones associated with its 700 MHz Lower Band A license, http://apps.fcc.gov/ecfs/document/view?id=7022420588

the FCC in Docket 12-69. It is no surprise that AT&T's proposed acquisition of Leap Wireless envisages a sale of its 700 MHz Chicago license.

Yet again in his report, Dr. Israel completely ignores these adverse competitive consequences of the removal of Leap Wireless, if and when acquired by AT&T, as an independent voice and challenger to AT&T on matters of crucial importance for the future competitive dynamics of the U.S. wireless market.

5.1 Value of Smaller Competitors

Smaller competitors include both operators with limited coverage of their own network facilities as well as MVNOs (Mobile Virtual Network Operators) that have no transmission facilities of their own. Their value is that they have shown, and will be able in future to offer, services that are better suited, or more flexibly adaptable, to the needs of specific market segments (by geography or a demographic characteristic, or a type of small business) than a huge national operator will typically bring to the market. They can operate as more nimble and/or sharply focused customer segment-sensitive sources of innovation – on their own, or in cooperation with third party services and applications providers – than the national players, pioneering ideas that may be commercialized later on a much wider scale. For these reasons, the FCC should resist ongoing efforts by AT&T, of which the proposed acquisition of Leap Wireless is only the most recent manifestation, to weaken and even remove smaller operators from the U.S. wireless market. The value of smaller carriers was recently affirmed in keynote remarks made by Chairwoman Clyburn delivered at the Annual Convention in mid-September 2013 of the Competitive Carriers Association[42].

6. Impact of AT&T/Leap Transaction on Selected CMAs

IAE was asked to analyze the impact of the proposed AT&T/Leap merger on areas in South Texas, where Leap has a market share among mobile customers based there that is substantially larger than its overall national market share. The results of this analysis in terms of the Herfindahl-Hirschmann Index (HHI) and the resulting market shares of the two largest post-transaction mobile services providers in these CMAs (Cellular Market Areas) and a few others are presented in Appendix B. These calculations show that in all the cellular market areas (CMAs) included in the South Texas area the transaction would increase the HHI index by an amount, and lead to a total HHI number post-transaction, that would exceed by far the respective thresholds for a (i) merger that is presumed to be anti-competitive, and (ii) "highly concentrated" market.

[42] Keynote Remarks, https://www.youtube.com/watch?v=y0L1YZ9Tw_s&feature=youtu.be

While we view the mobile market as being national in its operational dynamics, there are also valid concerns about local competitive effects of a proposed merger, if they will lead to customers in specific geographies (in this case South Texas) being deprived of access to the full range of wireless-based services, applications, and innovations, that are available at the national level.

This outcome will occur if some of the alternatives to the offerings provided by one, or at most two, locally dominant mobile operators are not accessible to customers in these geographies because the other operators who support them, but do not hold spectrum licenses that cover these geographies, cannot obtain fair, non-discriminatory roaming agreements from the operators that do, or do not hold licenses in bands that enable them to deploy economically viable networks within these geographies. The latter barrier arises in particular in rural areas (such as are found in South Texas) where no operator, other than AT&T or Verizon, has significant amounts of sub 1 GHz frequencies in its spectrum portfolio.

Competition between wireless service providers can either be facilities-based, which depends on the competitors' having comparable spectrum in terms of both quantity and distribution across low AND high frequency bands, and/or it can be based on fairly priced and non-discriminatory wholesale arrangements. No operator has a spectrum portfolio that is comparable to those of AT&T and Verizon, and both these operators have consistently and persistently opposed efforts to oblige them to provide fair and reasonable wholesale services to other wireless operators.

The impact of non-interoperability in the 700 MHz Band that in the best case will not be significantly reduced over the next few years (and even that reduction is very uncertain, since it is left to the "sole discretion" of AT&T), is particularly noticeable in South Texas. The Lower Band A block licenses in this region in the 2008 Auction 73 were mostly acquired by Verizon, which also acquired the Upper Band C Block license that includes Texas, and by Cavalier Wireless. Verizon decided post auction to make no use of its A Block licenses for which it paid a total of around $2 billion nationwide, while Cavalier Wireless has been inhibited from deploying service by the lack of devices that has resulted from AT&T's unauthorized introduction of non-interoperability[43].

We have also noted that Verizon's submissions in the Commission's Docket 12-69 on interoperability have been limited. They include only two filings in mid-2012, whose main points were: (1) Interoperability solutions should be based on voluntary industry solutions (as if Interoperability were not a basic precept in U.S.

[43] Cavalier's latest proposal (http://apps.fcc.gov/ecfs/document/view?id=7520944438) for its first interim construction milestone (35% of geographic coverage) in its 700 MHz Lower Band A frequencies is end-2016, over EIGHT AND ONE HALF years after the completion of Auction 73, and even then only if AT&T, at its "sole discretion", adheres to the earliest implementation of its voluntary commitment to introduce interoperability in the 700 MHz Lower Band.

Communications Law); (2) Interoperability in the 700 MHz Band should not be extended to cover its own Upper band C block licenses (Band Class 13); and (3) The introduction of the two Band Classes 12 and 17 was according to Verizon the outcome of a standards process at the 3GPP with open participation. This last characterization is disingenuous.

At the time (2008) of the definition of Band Class 17, to the best of our knowledge, ONLY AT&T and Verizon were present at the 3GPP, and furthermore the Commission itself was also not represented there. Thus the decision to introduce these two Band Classes, which has had, and continues to have, major repercussions throughout the entire U.S. wireless market and was ONLY RELEVANT TO THIS COUNTRY, was taken surreptitiously in the absence of the majority of major U.S. stakeholders, and at the sole initiative of AT&T, with the apparent silent complicity of Verizon.

To our knowledge Verizon did not take any steps at that time to alert other U.S. operators (including other licensees of Lower Band A spectrum of which it was the largest individual holder) or the Commission of this anti-competitive and unauthorized strategy by AT&T (which did not acquire any Lower Band A licenses) to introduce unprecedented non-interoperability into the U.S. wireless market.

As outlined in Appendix B the immediate aftermath of an acquisition of Leap Wireless by AT&T would lead to several duopoly supply situations for the wireless services available to consumers in South Texas. South Texas would also be establishing a blueprint for the future of a spectrum-based duopoly in the emerging LTE-dominated environment thanks to the dominance of AT&T and Verizon in sub 1 GHz frequencies. This LTE duopoly would comprise two non-interoperable silos, based on Band Class 17 and 13 respectively and the foreseeable introduction by these two operators of carrier aggregation between these Bands and other frequencies they hold in for example the AWS band. This situation is developing as a consequence of the combination of the initial focus of both of these operators on non-interoperable LTE deployments and Verizon's decision (as already noted) not to try to exploit its considerable 700 MHz Lower Band A licenses. If Verizon had sought to exploit these expensive frequencies there would have been significant incentives of economies of scale for chipset and device vendors to develop products that smaller Block A licensees have in practice been hard pressed to procure.

By eliminating Leap Wireless as a potential future source of innovative services, possibly including 700 MHz Lower Band A frequencies (as Leap very recently intended to do in Chicago), AT&T is effectively ensuring the emergence of a spectrum-based duopoly in LTE in South Texas. This conclusion is reinforced by the pattern of behavior of both Verizon and AT&T in resisting reasonable obligations on their actions in the public interest and insisting that any commitments they make are purely voluntary and at their discretion. "Trust, do not verify and the Commission has no authority to enforce" is their modus operandi.

We therefore conclude that approval of the AT&T/Leap Wireless acquisition, while being unjustified in the broader national context of competition and the public interest, would have particularly pernicious consequences for competition and the public interest for customers who reside in areas, i.e., parts of South Texas, where Leap Wireless has a market share significantly and in some cases substantially higher than it enjoys on an averaged national basis.

7. Information Gaps

AT&T's filing of the DESCRIPTION OF TRANSACTION, PUBLIC INTEREST SHOWING AND RELATED DEMONSTRATIONS, referred to above, contains a number of unsupported or inadequately supported assertions that require additional information if their validity and accuracy are to be evaluated independently and objectively. The proposed transaction between AT&T and Leap Wireless raises several significant issues of its competitive effects and the consequences for all wireless customers in the U.S., that have not yet been adequately and satisfactorily addressed in the material submitted to date by the Applicants so far.

Among the information that should be requested from the Applicants are the:

- Number and extent of the roaming arrangements between Leap and other operators that use Leap networks on behalf of their customers and the plans for their continuation or termination or replacement post-closing, with particular attention paid to roaming agreements that cover the CMAs in South Texas discussed in preceding Section 6;
- Number and extent of partnerships between Leap and other businesses that sell wireless services, e.g., WalMart and Radio Shack, and the plans for their continuation or termination or replacement.
- Practical significance of the statement, *"In addition, migrating Leap customers will have the opportunity to take advantage of the "bring your own device" option that will allow them to use any unlocked and technically compatible phone on AT&T's nationwide network."*[44] Existing Leap devices are CDMA/EV-DO and in some cases also AWS LTE- based, while AT&T's networks are GSM/HSPA plus LTE in Band Class 17 that no other operator uses – where would, or could, Leap's customers find devices to exercise the BYOD option?
- Level of commitment and plans of AT&T for passing on the savings to customers in the prices they pay resulting from the improved efficiencies that the acquisition of Leap will allegedly achieve. What evidence is there that previous mergers have resulted in savings that have been passed on in lower prices for consumers?

[44] http://apps.fcc.gov/ecfs/document/view?id=7520939109 (p.3 of Additional Information filed by AT&T on August 20, 2013).

- Identification of areas (CMAs) in which customers do not have, and are unlikely to have, a choice between four operators (whether for voice and/or broadband services), either because there are fewer than four licensees there, and/or because they include rural counties which some operators cannot cover economically because they do not have licenses in a sub 1 GHz band (perhaps only two have access to sub 1GHz frequencies, or maybe three, but only if 700 MHz Lower Band Block A licensees are included which have been hampered in their ability to deploy networks by AT&T's unauthorized introduction of non-interoperability).
- Provision of any additional porting data that differentiates between postpaid and prepaid subscriptions in order to assess the validity of the assertion that a low proportion of AT&T subscribers porting to Leap means that Leap and AT&T are not close competitors, which this report rebuts in Sections 3 and 4 above.
- Explanation of the timing of and reasons for the change in Leap's intent to deploy LTE in its 700 MHz Lower Band A license in Chicago, for which it spent the considerable sum given its size of over $200 million in late 2012, but rather to sell this license instead[45].

8. Network Economics and Spectrum Pricing: The "Expertise" of Dr. Israel

Dr. Israel's previous work[46] has revealed that he is unaware of the fundamentals of network economics and the history and realities of spectrum pricing. His opinions and statements about the consequences of spectrum transactions for the efficiencies of wireless networks, and hence his support of AT&T's contentions in these matters, are not based on a body of relevant and proven knowledge or understanding.

An example of his lack of knowledge of network economics is evident in his assertion in the "Economists Submissions":

"Here, this means that prices of different types of spectrum will adjust to equate the total costs of providing equivalent service (i.e., the rights for spectrum requiring greater facilities investment will tend to sell for less than rights to spectrum requiring

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[45] http://apps.fcc.gov/ecfs/document/view?id=7022420588, ibid.

[46] "Economists Submissions", http://apps.fcc.gov/ecfs/document/view?id=702242548: Prof. Michael L. Katz, Philip A. Haile, Dr. Mark A. Israel, and Dr. Andres V. Lerner, "Comments on the Submission of the U.S. Department of Justice Regarding Auction Participation Restrictions," *Policies Regarding Mobile Spectrum Holdings*, WT Docket No. 12-269 (June 13, 2013) ("Economist Response to DOJ") *and* Prof. Michael L. Katz, Philip A. Haile, Dr. Mark A. Israel, and Dr. Andres V. Lerner, "Comments on Appropriate Spectrum Aggregation Policy with Application to the Upcoming 600 MHz Auction," *Policies Regarding Mobile Spectrum Holdings,* WT Docket No. 12-269 (filed June 13, 2013) ("Auction Supplemental Reply") (attached to Letter from David L. Lawson (AT&T) to Marlene H. Dortch (FCC), GN Docket No. 12-268, WT Docket No. 12-269 (June 13, 2013).

less facilities investment). The equalization of total costs renders the possibility of foreclosure through hoarding low frequency spectrum alone remote at best."

Dr. Israel and his co-authors ignore the fact that 850 MHz licenses that are dominated by AT&T and Verizon cost them nothing, while Verizon acquired its 700 MHz Upper Block C licenses for a price of $0.76 per MHz-POP, and in 2012 bought AWS (1.7/2.1 GHz) licenses from cable companies for a price that is only about 10% lower (about $0.69 per MHz-POP). More fundamentally it is obvious that a substantially greater number of base stations (up to four to five times as many, as a consequence of the laws of electromagnetic propagation) are required in networks deployed in high band than in sub 1 GHz frequencies to provide coverage in rural areas. Their additional capital costs and operating expenses cannot possibly be compensated for by the higher prices often paid by operators in the real world for licenses in the sub 1 GHz compared to high band frequencies.

In the same report, Dr. Israel and his co-authors presented a highly selective quote – a fragment of a sentence – so as to give a statement made by T-Mobile a meaning with respect to the relative value of sub 1GHz and high band spectrum that is the opposite of the obvious intent of the passage from which it was taken.

"*Indeed, T-Mobile has publicly contradicted the Division's assertion that low-frequency spectrum is an essential input by stating that high- frequency spectrum is "as effective, or preferred to, lower band spectrum in providing competitive services."*[47]

However, the actual paragraph in this letter showed clearly that T-Mobile was not contradicting the Division's (the Department of Justice Antitrust Division's) assertion about low frequency spectrum, since its full text showing the phrase presented selectively by Dr. Israel (emphasized for this purpose) was:

"Although a mixture of lower and upper band spectrum is optimal for building competitive high speed mobile broadband networks, making more spectrum available in the lower bands would be especially effective in promoting competition in the wireless marketplace, as T-Mobile has described in past filings before the Commission. There are certain circumstances where upper band spectrum is ***as effective as, or preferred to, lower band spectrum in providing competitive services****, particularly for enhancing capacity in highly populated areas. As noted above, however, lower band spectrum provides a variety of critical spectral advantages that are not available from spectrum in the upper bands."*

If viewed in the most charitable light, the use of this deceptive tactic by Dr. Israel and his co-authors is disingenuous. However it is viewed, it unambiguously violates

[47] Letter from T-Mobile USA to Secretary Dortch, Ex Parte, The State of Mobile Wireless Competition, WT Docket 10-133 (Dec. 2, 2010), page 2, http://apps.fcc.gov/ecfs/document/view?id=7020922097

the basic standards required of work submitted as credible and reliable professional analysis by experts in the domain.

There has been no reaction, correction and/or retraction from Dr. Israel, although his failure to adhere to evidentiary standards of analysis and the refutation of his assertion about the relationship between spectrum prices and the total facilities costs of wireless networks were made known in an IAE filing on July 1st 2013[48].

It is surprising that Dr. Israel's errors and mistakes were not detected and corrected before they were submitted in public filings to the FCC, either by his colleagues at Compass Lexecon, or by AT&T, the sponsor of the work in which they appeared. AT&T possesses a wealth of expertise in matters of spectrum pricing and the costs of wireless network deployments that could have been called upon in internal reviews of these important documents to ensure their quality and accuracy.

9. The Critical Importance of the Macro-Economic Picture

We have presented analyses and evidence in this report that cover both the micro- and the macro-economic aspects and consequences of the proposed AT&T/Leap Wireless transaction. Regrettably, in reviews of previous proposed mergers, insufficient attention has been paid to macro-economic consequences. Typically where AT&T has been an Applicant, it has avoided drawing the attention of the Commission to macro-economic implications that demonstrate, as we have, a systematic strategy by AT&T to use its huge financial resources to erode competition in the U.S. wireless market by buying out competitors. This strategy is being augmented by AT&T's unauthorized introduction of non-interoperability and its goal of ensuring that no limits are imposed on the quantities of spectrum it can acquire whether in total or in sub 1 GHz bands. AT&T has also been complicit in the repeated use of a spurious metric[49] (subscribers per MHz, defined as the total number of an operator's subscribers divided by the average amount of spectrum it

[48] IAE, Reply Comments, July 1st 2013, FCC Docket 13-135, http://apps.fcc.gov/ecfs/document/view?id=7520926985

[49] AT&T's disregard for facts in filings with the FCC in matters where it possesses an enormous depth of knowledge and expertise, is glaringly evident in its failure to correct the CTIA's use (AT&T is one of the CTIA's largest and most influential members) of the demonstrably spurious metric of spectrum efficiency that has repeatedly been misrepresented as evidence of the superior spectral efficiency of the two largest U.S. mobile operators, and of the U.S. mobile industry as a whole, compared to other countries, e.g., most recently on p.67 in CTIA Comments in Docket 13-135, June 17th. 2013, (http://apps.fcc.gov/ecfs/document/view?id=7520920372). The spurious nature of this metric has been publicly exposed on multiple occasions, (e.g. "The Mystery of the Spurious Spectrum Efficiency Metric: Why Are America's Wireless Leaders Promoting a Meaningless Measure?" Bloomberg BNA Daily Report for Executives, May 31st. 2013). To our knowledge there have been no corrections or retractions or rebuttals from AT&T or the CTIA despite ample opportunities and time to prepare them.

holds in its license areas) that purports to "prove" that the largest U.S. operators are the most efficient users of spectrum. This metric is used to support the assertion that anything AT&T does to expand its spectrum assets and customer base is bound to generate significant consumer benefits because it is more efficient than its smaller competitors.

Unfortunately, other interveners in reviews of previous proposed acquisitions by AT&T have tended to represent primarily or even exclusively their own specific business interests. They have failed to lay out for the Commission the broad, deep and long lasting macroeconomic impact and resulting harm to the public interest that each acquisition causes individually, and **more fatefully will inevitably generate cumulatively in the mid- and long-term.** AT&T has also been prepared to make so-called "voluntary" commitments to allay concerns expressed by Commission staff about potential damage to the interests of consumers as a result of any individual acquisition. For example, in the case of the recently decided ATN (Atlantic Tele-Network) acquisition,[50] AT&T agreed to an expanded deployment of LTE - ***which however translates to an increase in non-interoperability in the near term that is a key component of its anti-competitive strategy, and is not covered in the recently proposed interoperability deal[51].***

In this FCC Memorandum Opinion and Order it is revealed that AT&T has made various commitments, e.g., regarding roaming agreements, smart devices and contracts to be made available to ATN customers, in order to achieve approval of the ATN acquisition. The Commission will monitor adherence to these commitments, and AT&T will submit quarterly progress reports on the status of their implementation. However, there are NO penalties or incentives or enforcement procedures associated with these "commitments".

AT&T has a long record of resistance to Commission Orders (e.g., Data Roaming[52]) and is striving to free itself of any effective regulatory supervision by the Commission[53]. There is a natural tendency of profit-motivated businesses to weigh the costs of violating commitments if (a) detected, and then (b) if punished, against the benefits gained through the violations. The benefit to AT&T of failing to enter into fair and reasonable roaming agreements can be considerable in weakening smaller operators and thereby leading to a higher market share for AT&T among customers who want or need nationwide coverage. There is no reason to believe that AT&T will live up to these ATN-related or any other voluntary commitments

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[50] Memorandum Opinion and Order, http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db0920/DA-13-1940A1.pdf

[51] Letter from AT&T to the Honorable Mignon Clyburn, Chairwoman Federal Communications Commission, September 10, 2013, ibid.

[52] AT&T, Verizon Attack FCC's Data Roaming Rules," http://www.fiercewireless.com/story/att-verizon-attack-fccs-data-roaming-rules/2011-04-08

[53] Telecoms want FCC out of broadband regulation," ibid.

made as "concessions" in order to obtain approval of the competition-eroding transactions it is pursuing, except in the case of the expansion of LTE coverage where it has a very good reason to do so.

There is considerable evidence to the contrary that AT&T will not abide by its concessions and commitments. AT&T exhibits a careless disregard for the facts (both in commission and omission) of the past and the present in its filings with the Commission, demonstrated in this report, and will do the same in making up "facts" for the future.

We therefore respectfully urge the Commission to take into account the macro-economic and the cumulative mid- and long-term implications and consequences of the AT&T/Leap Wireless transaction along with the damage to the broader public interest that the Commission has the obligation and authority to protect that will flow from the combination of this transaction with AT&T's various other anti-competitive strategies over the past several years. The review of this latest and current transaction should result in a broad and forward looking FCC scrutiny and analysis. For example, it must anticipate the future role of carrier aggregation, among other macro factors, that involve and affect the fundamental principles and precepts of U.S. Communications Law that are independent of technology. It should also address the obligations as well as the rights of spectrum licensees. It should not be confined to consider only, or primarily, the immediate impact upon Leap's customers, as AT&T (and its new found "friend" Leap Wireless) would prefer.

10. Conclusions

The report submitted by Dr. Israel absolving the AT&T/Leap Wireless acquisition from any harmful consequences and linking it with allegedly significant benefits is fundamentally flawed in terms of (a) its internal logic; (b) the findings it derives from the evidence it includes; and (c) the substantial evidence that it ignores which supports a contradictory conclusion about the anti-competitive impact and damage to the public interest that will ensue.

The invalid conclusions based on the flawed contents of his report confirm an earlier IAE finding of Dr. Israel's lack of knowledge and expertise about the economic fundamentals of wireless networks and the wireless market, and hence his lack of credibility as an expert. This finding emerged in an analysis of previous studies he carried out on behalf of AT&T.

This IAE analysis clearly demonstrates that the disappearance of Leap Wireless as an independent competitor as a result of its proposed acquisition by AT&T would have the following adverse consequences:

- Removal of an alternative supplier of wireless services offered to the majority (over 90%) of U.S. customers that has shown itself to be more

innovative in serving some segments of this population than AT&T, and more aggressive in some respects in exploiting the spectrum assets it holds;

- Elimination of a roaming partner for other operators in areas where Leap has network facilities. Leap also offers a source of roaming revenues for these operators in their own areas. In contrast, AT&T has consistently shown itself to be hostile to the establishment of fair and non-discriminatory cost-based roaming arrangements, so the disappearance of Leap will erode the competitiveness of the wholesale roaming market.

The claim that Leap and AT&T are not close competitors is invalid because despite their disparities in size:

- They are competing for customers and revenues in the same single wireless market, which is acknowledged by AT&T and Dr. Israel.
- This single wireless market is experiencing intensified competition for customers between postpaid contract and prepaid or no contract models, i.e., the traditional respective product foci of AT&T and Leap (Cricket) are overlapping to a growing extent as the substitutability of prepaid and postpaid products becomes stronger.

AT&T's acquisition of Leap will remove an independent competitor to a business model that is being targeted by AT&T, along with its major rivals, as a growing factor in their overall business strategy. This acquisition, if approved, would eliminate the possibility that Cricket will be a real or disruptive competitor to AT&T's Aio product. Post-transaction Cricket would no longer be an independent source for the introduction of innovative and imaginative new services designed to compete with AT&T's current offerings and to better serve its customers, which is its aim in launching Aio[54].

The removal of another smaller operator, Leap Wireless, as an independent entity through its absorption into AT&T would reinforce the momentum towards a less dynamic and less diverse U.S. wireless market. In this future market environment, the proven innovative potential of smaller, less cumbersome players, as well as the valuable roles they can play, along with the voices they can raise, to meet and protect the differentiated needs of specific segments of customers, would become increasingly stymied.

The combination of the proposed AT&T/Leap Wireless acquisition with multiple other initiatives[55] undertaken by AT&T, and visibly planned for the near and

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[54] AT&T, Description of Transaction, Public Interest Showing and Related Demonstrations, ibid. (p.12)

[55] See for example, http://www.forbes.com/sites/ericsavitz/2013/01/22/att-to-buy-atlantic-tele-network-mobile-unit-for-780m/; "AT&T Continues Acquisition Spree To Meet LTE Spectrum Needs," http://www.forbes.com/sites/greatspeculations/2012/10/12/att-continues-acquisition-spree-to-

medium-term, means that this transaction would contribute to intensifying harmful consequences for the U.S. wireless market that extend far beyond the immediate impact it will have on Leap's own customers.

The effects of these other initiatives that AT&T's acquisition of Leap would exacerbate are cumulative and mutually reinforcing. They demonstrate that AT&T is following a strategy that is aimed at enhancing and exercising its market power in order to frustrate the public interest, erode competition in the U.S. wireless market, and even though it is the steward of considerable public resources, reduce the value of these publicly-owned resources that should be used to generate benefits for ALL customers of the T-I-E ecosystem and the U.S. economy on an equal, non-discriminatory, non-preferential basis at affordable rates.

We have provided documented evidence that in its FCC filings Leap Wireless has repeatedly opposed the actions and positions of AT&T that are driven by this strategy. Leap has shown awareness of, and has vigorously criticized, core elements of this strategy that have allowed AT&T to systematically weaken smaller operators, such as Leap.

Approval of the AT&T/Leap Wireless transaction would be tantamount to blessing the anti-competitive strategy and tactics of AT&T while also giving it a green light to pursue this strategy to its logical conclusion, i.e., the elimination of all operators that lack nationwide facilities. This approval would be irreconcilable with both the letter and the spirit of Chairwoman Clyburn's keynote remarks at the CCA (Competitive Carriers Association) Annual Convention on September 18th 2013[56]. In these remarks she emphasized, just as this report has pointed out, the value of small competitive operators, the importance of fair data roaming arrangements according to the FCC's Data Roaming Order[57] that AT&T has resisted[58], and the Commission's intent (and implied need) to keep a close eye on the implementation of the 700 MHz Lower Band interoperability deal.

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meet-lte-spectrum-needs/; and very recently AT&T purchased assets from CSpire's subsidiary Core Wireless that offers GSM-based service to subscribers in Northeastern Alabama separately from CSpire's CDMA networks.

[56] Keynote Remarks, ibid.

[57] "Data Roaming Order," ibid.

[58] "AT&T, Verizon Attack FCC's Data Roaming Rules," ibid.

Appendix A: Leap Wireless Strategy Prior to AT&T's Bid

Robust Networks Provide Improved Customer Experience

LEAP

- LTE coverage available over 21M CPOPS
  - Currently offer 3 LTE devices
    - Expect to launch up to 5 additional LTE devices in 2013
- Networks performing well
  - 3G - average download speeds of ~600 kbps
  - 4G - average download speeds of ~2.5 Mbps
- Expect to introduce broader WiFi offload strategy in 2Q13
- Company exploring cost-effective 4G LTE coverage expansion
  - Expect to implement nationwide 4G LTE roaming in 2H13
  - Continue to explore opportunities to utilize our spectrum via partnerships
  - May elect to deploy up to 10M additional LTE CPOPS in 2013
    - Included in 2013 CapEx guidance

cricket 4G LTE

Thoughtful spectrum management and robust 3G network provide Company opportunity to cost-effectively explore 4G coverage expansion

Source: Leap Wireless 1Q13 Earnings Presentation

Appendix B: Impact of AT&T/Leap Transaction in Selected CMAs

Table 1: Impact of AT&T/Leap Transaction in Selected CMAs

[redacted]

[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

[redacted]

[redacted]

[redacted]

Appendix C: AT&T's Plans for Carrier Aggregation

Table 2: AT&T's Roles in Active Work Program for Inter-Band Carrier Aggregation

Source: 3GPP Documents

3GPP Release	AT&T's Initiatives in Inter-Band Carrier Aggregation by Band
11	4 (AWS) + 17
11	2(PCS) + 17
11	5(850 Cellular) + 17
11	4+5
12	2+5 +30 (WCS)
12	2+17+30
12	2+29*+30
12	4+5+30
12	4+17+30
12	4+29*+30

*Band 29 is downlink only (717-728 MHz, i.e. Lower Band D and E blocks) to be used exclusively in carrier aggregation. This Band is held predominantly by AT&T with DISH Network holding E block licenses in several major cities covering a total of 70 million POPs.

It is noteworthy that no plans for carrier aggregation that include Band Class 12 are associated with AT&T, which is focused on Band Class 17 as far as paired frequencies in the 700 MHz Band are concerned. U.S. participation in inter-band carrier aggregation that includes Band 12 is led by U.S. Cellular for aggregation with Bands 2 (PCS or 1900 MHz) and 5, and by Leap Wireless for Band 4. If acquired by AT&T, Leap Wireless will have no motivation to pursue carrier aggregation with Band 12, as its single 700 MHz Lower Band A license in Chicago is to be sold. Verizon is focused on carrier aggregation work at the 3GPP that includes its band Class 13 in inter-band versions.

The inference from AT&T's activities at the 3GPP is that it has no expectation – or intention – of a meaningful introduction of Interoperability in the 700 MHz Lower Band despite the recently announced interoperability deal, but, to the contrary, is planning to extend non-interoperability as widely as possible. The dismissive attitude of AT&T toward Interoperability, a basic precept in the U.S. Communications Sector that has been followed and embodied in law and regulatory policy for decades for the benefit of all U.S. consumers, has been confirmed in its intervention in the FCC Docket on the 600 MHz band (Incentive Auctions). AT&T has indicated that it views an Interoperability Mandate in the 600 MHz band as

inappropriate, premature and subordinate to, or of lower priority than, the public interest.[59]

We declare under penalty of perjury that the foregoing is true and correct to the best of our information and belief.

___ _____

Alan Pearce

___ _____

Martyn Roetter

September 26, 2013

[59] Reply Comments of AT&T, Inc. Docket 12-268, http://apps.fcc.gov/ecfs/document/view?id=7022130222

CERTIFICATE OF SERVICE

I, Cheng-yi Liu, an attorney with the law firm of Fletcher, Heald & Hildreth, PLC, hereby state that a true copy of the foregoing PETITION TO DENY was sent by electronic mail, this 27th day of September 2013, to the following:

James H. Barker III
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Peter J. Schildkraut
Arnold & Porter LLP
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Additionally, a REDACTED copy of the foregoing PETITION TO DENY was sent by electronic mail to the following:

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_____/s/_____
Cheng-yi Liu