

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

In the Matter of)	
)	
Applications of Cricket License Company, LLC,)	
<i>et al.</i> , 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 OR CONDITION

1. NTCH, Inc. (“NTCH”), by its attorneys, hereby petitions the Federal Communications Commission (“Commission”) to deny the grant of the above referenced applications or, in the alternative, condition the grant of the applications on AT&T, Inc.’s (“AT&T’s”) offering of reasonable roaming rates comparable to those currently offered by Leap Wireless International, Inc. (“Leap”) and its Cricket subsidiary.

2. More specifically, if the applications are not denied outright, the Commission should at a minimum condition a grant on AT&T: (1) honoring carriers’ existing arrangements to roam on Leap’s CDMA network while that network is maintained; and (2) offering comparable roaming rates and arrangements on its GSM/LTE network to any carrier that converts from CDMA to GSM/LTE in the future. These conditions are necessary to ensure that smaller carriers operating CDMA networks are not left stranded without adequate roaming options once Leap’s CDMA network is unavoidably dismantled by AT&T.

3. NTCH is a Tier III telecommunications carrier which operates a CDMA network and competes or will compete with AT&T and Cricket in several markets around the United States.¹ As a CDMA operator, NTCH has roaming arrangements with Cricket in markets where NTCH itself does not hold spectrum. If consummated without appropriate remedial conditions, the proposed transaction will eliminate one of the few remaining large-scale CDMA carriers, leaving smaller carriers like NTCH without viable roaming partners outside of the nationwide carriers.

4. The continued availability of roaming partners is crucial to the survival of smaller carriers like NTCH. Absent these alternatives, the major carriers, especially AT&T and Verizon, have unbridled power to impose exorbitant roaming rates—along with unreasonable terms and conditions—upon small carriers.

5. The roaming imbalance—especially in the CDMA arena—has been exacerbated in recent years as the Commission has permitted the extinction of important CDMA roaming partners such as MetroPCS and ATNI. These carriers have fallen victim to the weaken-and-kill strategies employed by the majors, and their CDMA networks are now fated for dismemberment as operations are merged into those of their GSM-based acquirers. With each kill by the majors, smaller providers like NTCH are also weakened by being placed at an even greater competitive disadvantage, both in terms of spectrum assets and in terms of reasonable roaming arrangements to enable nationwide coverage. The Commission should not allow this anticompetitive trend to continue and NTCH believes these are adequate grounds to deny the applications.

6. Should the Commission not deny the applications outright, adequate safeguards must be put in place to ensure that viable roaming options are available to smaller carriers. This

¹ In particular, NTCH operates in markets where AT&T will acquire additional spectrum from Leap. NTCH is also a CDMA roaming partner with Cricket.

is extremely important for smaller carriers such as NTCH, whose customers must rely on roaming arrangements to have ubiquitous access to wireless services. This is especially critical for smaller CDMA carriers given the recent loss of viable CDMA roaming alternatives, unavailability of reasonable roaming rates with Verizon Wireless, and the outlook for CDMA in general.

7. Indeed, the outlook is grim. Regional CDMA carriers like MetroPCS and ATNI (and now, potentially, Cricket) are being or have already been swallowed up by the majors. Verizon dominates the CDMA roaming market and is known to exact predatory roaming rates due to its near-monopoly control of that interface. Sprint is the lesser evil of the two CDMA majors, but it is not always a reliable or available option, given the sparseness of its coverage and its relative lack of conventional spectrum. Furthermore, both Verizon and Sprint are transitioning away from CDMA in the near future.² Smaller CDMA carriers are finding that there are significant technical and cost issues in making their systems LTE-compatible with the major carries -- issues which have left some carriers without any LTE access at all.³ As CDMA becomes obsolete, there is a real danger that smaller CDMA carriers and their customers will be left stranded.

8. At a minimum, the Commission should condition grant of the applications on AT&T continuing to maintain Cricket's CDMA network (for at least a reasonable period of time) and honoring existing roaming arrangements between Cricket and other carriers. The

² It is understood that Verizon intends on transitioning to only LTE and VoLTE devices in the near future. *See, e.g.*, <http://www.fiercewireless.com/story/verizon-wireless-sunset-2g-and-3g-cdma-networks-2021/2012-10-10> (last accessed September 27, 2013). Sprint's Network Vision plan also intends on consolidating network technologies in the near future. *See* <http://newsroom.sprint.com/presskits/sprint-network-vision-information-center.htm> (last accessed September 27, 2013).

³ This issue affects only CDMA carries, not GSM.

applications are literally devoid of any representations or commitments from AT&T regarding the continuation of roaming arrangements on Cricket's CDMA network. The Commission should seek these commitments from AT&T in its further review of this transaction and condition any grant appropriately.

9. With the bleak outlook for CDMA, it is also likely that many smaller carriers will need to evaluate a migration to GSM-based networks in the future. As Verizon dominates the CDMA roaming market, AT&T dominates GSM. While T-Mobile is a potential roaming partner, its network is far less extensive than AT&T's and is therefore not as generally available for roaming purposes. Moreover, even the Commission has acknowledged the difficulties that the industry has faced in negotiating reasonable roaming agreements with AT&T.⁴ Thus, as a condition to the grant of the applications, the Commission should also require AT&T to offer those carriers with existing CDMA roaming agreements with Leap comparable roaming rates, terms and conditions should those carriers transition from CDMA to GSM networks in the next three years.

⁴ See, e.g., *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, 26 FCC Rcd 5411 (April 7, 2011).

10. It is clear that the proposed transaction will negatively impact the CDMA roaming market to the detriment of smaller carriers. Accordingly, NTCH urges the Commission to deny the applications or condition any grant on commitments from AT&T to abide by the roaming obligations discussed herein.

Respectfully submitted,

NTCH, Inc.

/s/

Donald J. Evans
Cheng-yi Liu
Fletcher, Heald & Hildreth, P.L.C.
1300 N 17th St., 11th Floor
Arlington, VA 22209
703-812-0400

Its Attorneys

September 27, 2013

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 OR CONDITION was sent by electronic mail, this 27th day of September 2013, to the following:

James H. Barker III
Latham & Watkins LLP
jim.barker@lw.com

Peter J. Schildkraut
Arnold & Porter LLP
peter.schildkraut@aporter.com

Additionally, a copy of the foregoing PETITION TO DENY OR CONDITION was sent by electronic mail to the following:

Best Copy and Printing, Inc. (fcc@bcpiweb.com)
John Schauble (john.schauble@fcc.gov)
Linda Ray (linda.ray@fcc.gov)
Kathy Harris (kathy.harris@fcc.gov)
Kate Matraves (catherine.matraves@fcc.gov)
David Krech (david.krech@fcc.gov)
Jim Bird (transactionteam@fcc.gov)

_____/s/_____
Cheng-yi Liu