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 Application of Cricket License Company, LLC and Leap Licenseco Inc. for Consent to Assignment of Authorization	))))))))))	WT Docket No. 13-193

To: Chief, Wireless Telecommunications Bureau

NTCH REPLY TO JOINT OPPOSITION

1. NTCH, Inc. ("NTCH"), by its attorneys, hereby replies to the opposition filed by AT&T Inc. ("AT&T") and Leap Wireless International, Inc. ("Leap") (collectively, "Applicants")[1] in response to NTCH's Petition to Deny or Condition.[2] The Joint Opposition severely mischaracterizes the state of affairs in the roaming market in order to conceal the specific harms which will necessarily manifest as a direct result of the proposed transaction.[3] Should the Commission decide to approve the transaction then, at a minimum, the conditions outlined in the NTCH Petition must be imposed to mitigate the potential harms.

2. The Joint Opposition's mischaracterizations on roaming (*e.g.*, that Leap is insignificant as a roaming provider and sufficient roaming alternatives will continue to exist) are no surprise coming from AT&T which, due to its dominance and market power, has neither need

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[1] Joint Opposition of AT&T Inc. and Leap Wireless International, Inc. to Petitions to Deny and Condition and Reply to Comments (filed Oct. 23, 2013) ("Joint Opposition").

[2] Petition to Deny or Condition of NTCH, Inc. (filed Sept. 27, 2013) ("NTCH Petition").

[3] Joint Opposition at 39-42.

nor incentive to enter into reasonable roaming arrangements with smaller carriers. But for Leap, the Joint Opposition's take on roaming is especially disingenuous given the completely opposite views the carrier espoused not long ago in opposing AT&T's proposed merger with T-Mobile.[4] Even in 2011, several AT&T acquisitions ago, Leap recognized that there was already a lack of feasible roaming options outside of the major carriers,[5] and "the greater [AT&T's] nationwide coverage, the less incentive it has to reach agreements with other carriers and the greater leverage it has to withhold or delay such agreements."[6] The situation Leap described in 2011 has only gotten worse as more regional carriers have been acquired by AT&T (and Verizon) over the years. This proposed transaction will further compound the problem. Applicants attempt to characterize the loss of Leap as a roaming partner as an insignificant piece of straw, but in all likelihood this will be the straw that breaks the camel's back.

3. Leap has much greater significance in the roaming market than the Joint Opposition's deviously crafted statements let on. In an attempt to downplay Leap's significance as a roaming partner, Applicants assert that "*relatively few* carriers have customers who roam on Leap's network *extensively*."[7] In support of this assertion, Applicants cite ambiguous statistics for *one month* in which "only three carriers purchased more than $5,000 per month of Leap's voice roaming service, and only two carriers purchased more than $5,000 per month of data

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4 Petition to Deny of Leap Wireless International, Inc. and Cricket Communications, Inc., WT Docket No. 11-65, 20-23 (filed May 31, 2011) ("Leap/Cricket Petition to Deny").

5 *Id.* at 21 ("there is no longer a feasible way to assemble the nationwide coverage that consumers demand through piecemeal roaming arrangements").

6 *Id.*

7 Joint Opposition at 39 (emphasis added). This assertion essentially concedes that there are some carriers with customers who *do* roam extensively on Leap's network.

roaming service."[8] Applicants fail to acknowledge, however, that *quantity* does not necessarily equate with *significance* or *importance*. Significance and importance are relative.

4. For large carriers, like AT&T, with large, demographically diverse and geographically mobile customer bases, $5,000 a month in roaming charges may be an insignificant amount. For smaller carriers, like NTCH, focusing on a much smaller customer base of budget consumers (who are generally less geographically mobile), $5,000 a month in roaming charges is likely a very significant amount. Smaller carriers still must be able to offer roaming and nationwide coverage, and must be able to find suitable roaming partners—with reasonable rates, terms and conditions—to do so. In this sense, Leap is extremely important to the $5,000 per month small roaming carrier. Large carriers like AT&T and Verizon apparently care not for dealing with such small potatoes in a "commercially reasonable" manner, despite a regulatory obligation to do so. Leap itself has observed that "[t]he problem is that what is deemed 'commercially reasonable' in a duopoly environment where one party to the agreement has market power is very different from what is commercially reasonable in a more competitive market,"[9] and the larger carriers essentially leverage their market power to manipulate the criteria for evaluating commercial reasonableness.[10] Thus, small carriers must instead rely upon other smaller carriers, like Leap, for truly commercially reasonable roaming agreements and to help provide a competitive check on the larger carriers.[11]

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[8] *Id.* at n.144. Applicants also assert that Leap is not an important roaming partner for NTCH because it only "receives an insignificant *amount* of roaming services from Leap." *Id.*

[9] Leap/Cricket Petition to Deny at 22.

[10] *Id.* at 23.

[11] Indeed, this is likely the reason that all of Leap's current roaming customers are so "insignificant" in size.

5. Yet, Applicants still maintain that the loss of Leap as a CDMA roaming partner is inconsequential because Verizon (and to a lesser degree, Sprint) provides overlapping network coverage and is therefore an adequate roaming alternative.[12] Given Verizon's known propensity to charge roaming rates at many multiples beyond what might be considered commercially reasonable, the roaming charges incurred now by a $5,000 per month roaming carrier on Leap's network could very well become $50,000 per month on Verizon's. With the loss of Leap as a competitive check, Verizon becomes an even greater market force in the CDMA market—with even more power to manipulate the criteria for commercial reasonableness—and the resulting multiple on roaming rates could even increase. This cannot be called an adequate alternative.

6. The Joint Opposition attempts to sidestep the obvious: Leap is an important CDMA roaming partner, the loss of which would cause significant harm to the roaming market. The transaction, if consummated, would also result in direct harm to all of the smaller CDMA carriers which currently utilize Leap for roaming. The conditions described in the NTCH Petition are necessary, as a minimum, to mitigate these harms.

Respectfully submitted,

NTCH, Inc.

/s/

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October 31, 2013

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[12] Even between both Verizon and Sprint, there is still 1.7% of Leap's existing network which is not covered by either. Joint Opposition at 40.

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of October, 2013, I caused a true and correct copy of the foregoing to be served by first-class mail, postage prepaid (+), or electronic mail upon:

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