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December 16, 2013

Via Electronic Filing

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

Re: Notice of Ex Parte Presentation; 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 13-193

Dear Ms. Dortch:

On December 12, 2013, Paul Posner and John Goocher of Youghioghny Communications, LLC ("YC"), Dr. Alan Pearce of Information Age Economics, the undersigned and Cheng-yi Liu of Fletcher, Heald & Hildreth, PLC, met with the following Commission staff members: Hilary Burchuk and Joel Rabinovitz from the Office of General Counsel; Judith Dempsey, Aleksandr Yomkelevich, Paroma Sanyal, Brigid Calamis, Susan Singer (via telephone) and Monica DeLong from the Wireless Telecommunications Bureau; and Jack Erb from the Office of Strategic Planning & Policy Analysis. Dr. William Rogerson, a consultant for the Commission, also participated via telephone.

At the meeting, the participants discussed the following:

We discussed how the Commission must consider the bigger picture in evaluating transactions such as the one being proposed. The Commission should not look at each transaction as through a telescope, but rather consider each transaction in the context of historical consolidation and the incremental impact of each acquisition by the major wireless carriers. If the Commission continues to approve transactions like the one proposed, we will end up with an extremely consolidated wireless market.

Each acquisition by the major wireless carriers exacerbates spectrum aggregation concerns, and also increases the major carriers' control over other tools which can be used to exercise market power to the detriment of competition.

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Spectrum aggregation is a major problem because it serves as a limiting factor on the ability of other carriers to compete. This is especially the case for smaller regional providers which may not have access to enough spectrum to support advanced services such as LTE, rendering such providers unable to compete in the long term with major carriers that have a spectrum surplus.

The Commission should be concerned about spectrum which is acquired for warehousing. The major wireless carriers, especially AT&T and Verizon, appear to be stockpiling spectrum through incremental acquisitions, despite the fact that they already hold licenses for significant amounts of unused spectrum. Idle spectrum is not put to productive use but prevents competing carriers from being able to use it. In evaluating this proposed transaction, the Commission should look at how much spectrum held by both AT&T and Leap is currently idle.

The Commission should not effectively pre-judge the spectrum cap proceeding by permitting major carriers like AT&T to fill their larders and then impose a spectrum cap. The majors appear to be on a buying spree in advance of the incentive auction and the spectrum cap proceeding. Permitting major acquisitions now could actually reduce the Commission's take in the auction and defeat its purpose.

Any major acquisitions proposed while the spectrum cap proceeding is pending should either be deferred until the proceeding is resolved, or if that is too far off, conditioned on the outcome of that proceeding. To address situations where spectrum has already changed hands as a result of a transaction, the Commission could explore utilizing a trust mechanism to make it easier for spectrum to be later divested if a carrier exceeds any spectrum cap that is eventually established.

We discussed generally how both AT&T and Leap have described Leap as a nationwide competitor, and how Leap has served as a pressure point on major carriers and other competitors. Further, despite contradictory statements provided in the companies' application, AT&T's and Leap's own internal documents show that the companies do in fact compete.¹ Loss of Leap as a low cost nationwide competitor would hurt competition both nationally and locally.

We also discussed generally how even local/regional competition can affect the decisions of the major carriers. For example, major carriers have historically lowered prices in the South Texas region to compete with offerings of smaller regional carriers, and major carriers have also created "flanker" brands to compete with regional prepaid service offerings.

¹ Specific details of internal documents were not revealed or discussed.

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The Commission should evaluate this transaction under the paradigm of the proposed AT&T and T-Mobile merger. The market has benefited from a T-Mobile that is independent of AT&T, and the industry will also benefit from an independent Leap.

We discussed other harms and negative effects which would be caused by the proposed AT&T and Leap transaction, including the following.

- The elimination of yet another regional carrier means the major carriers gain even more control over the handset market. Manufacturers are less likely to produce specialty handsets which can be utilized on regional carrier networks if number of independent carriers, and thereby aggregate buying power, continues to decline.
- The proposed transaction would cause an extreme reduction to competition in South Texas, and possibly elsewhere.
- Roaming options, especially for CDMA carriers, would be significantly reduced.

We also discussed how a Leap business model patent on providing wireless communications services under an “all-you-can-eat” pricing scheme would be very dangerous in the hands of AT&T.² Leap has instituted patent infringement actions against at least one other carrier, but it is uncertain how many other carriers are subject to the patent. It was surmised that if AT&T were to hold the patent, it could signify an end to the flat-rate business model for wireless services.

The participants discussed the large amount of data produced by AT&T and Leap in response to the Commission’s interrogatories. We noted that the applicants have not accurately stated the status of Cricket's continuing ownership in Flat Wireless post-closing with AT&T. A thorough review of the data and documents produced is likely to reveal similar anomalies between the actual facts versus the representations AT&T and Leap have made in their application and other supporting narratives.

Finally, we urged the Commission to give interested parties an opportunity to comment should AT&T and/or Leap submit any last minute proposals of possible concessions to ameliorate the negative effects of this transaction.

² Handouts provided during the meeting are enclosed with this submission.

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Should you have any questions, please contact the undersigned.

Sincerely,

/s/

Donald J. Evans
Counsel for Youghiogheny Communications, LLC

Enclosures

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