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January 6, 2014

***Via Electronic Filing***

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

**Re: Written *Ex Parte* Presentation of Buffalo-Lake Erie Wireless Systems Co., LLC; 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**

**REDACTED VERSION – FOR PUBLIC INSPECTION**

Dear Ms. Dortch:

Buffalo-Lake Erie Wireless Systems Co., LLC, by its undersigned attorney, is submitting the enclosed REDACTED *ex parte* comments in the above-referenced proceeding. The full unredacted version of the *ex parte* comments is being hand delivered under separate cover, and unredacted copies are also being delivered to Brigid Calamis of the Wireless Telecommunications Bureau.

Should you have any questions, please contact the undersigned.

Respectfully submitted,

*/s/ Donald J. Evans*  
Counsel for Buffalo-Lake Erie  
Wireless Systems Co., LLC

Enclosure

cc: Best Copy and Printing, Inc. Kate Matraves  
John Schauble David Krech  
Linda Ray Jim Bird  
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Dear Ms. Dortch:

This ex parte submission addresses the plans and representations of the Applicants regarding the provision of roaming service by Cricket and, if the proposed transaction is approved, AT&T Corp as Cricket's successor. Buffalo-Lake Erie Wireless Systems Co., LLC ("Blue Wireless") has not previously commented or protested in this proceeding, but recent developments have prompted it to alert the Commission to a danger not previously reported to the Commission regarding the proposed transaction.

It may be recalled that Blue Wireless objected strenuously to the proposed acquisition of ATN's ALLTEL operating assets in 2013. One of the chief objections was that the pool of CDMA roaming partners, of which Blue Wireless is one, was becoming increasingly constrained by the on-going acquisitions of CDMA carriers by Verizon, AT&T and others. Since Blue Wireless filed its objection to that transaction last spring, MetroPCS has been acquired by T-Mobile, Revol, a large regional CDMA carrier in the Ohio/MidWest/Great Lakes region near where Blue Wireless operates, has announced that it will shortly sell its licenses to Sprint and cease business, and, of course, the acquisition of ATN by AT&T has been consummated. These actions all in the last twelve months have reduced the roster of available roaming partners with more than localized coverage to a handful.



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The proposal to remove Cricket from that already small club gave Blue Wireless concerns because it would eliminate a long-standing nationwide CDMA roaming partner from the industry picture. Blue Wireless had not yet entered into a roaming agreement with Cricket as of the original Cricket-AT&T announcement but assumed, based on the parties' representations, that it would be able to do so in the ordinary course of business while the transaction was pending. Any such roaming agreement would be assumed by AT&T if it is allowed to consummate the transaction. The imminent departure of MetroPCS from the CDMA roaming pool, coupled with the announcement that Revol is ceasing operations and the accelerating departures of other carriers from the CDMA roaming scene, prompted Blue Wireless to seek an immediate roaming agreement with Cricket to ensure that its customers will have a reasonably priced CDMA roaming partner both in the near and medium-to-long term in markets where many of its customers are likely to roam.

We had assumed that reaching an agreement would be relatively quick and painless given Cricket's existing roaming agreements with numerous other carriers. Instead, **[BEGIN REDACTED MATERIAL]**



**[END REDACTED MATERIAL]**

While these rates are absurdly high on their face and will likely require the initiation of complaint proceedings at the Commission, they also reflect the early coming to pass of the very consequences foretold by several petitioners to deny. NTCH, Youghioghney Communications, and the Competitive Carriers Association all voiced concerns that the loss of Cricket as an independent roaming partner would have the effect of raising the roaming rates which independent carriers would have to pay the few remaining CDMA carriers who would dominate the market. It now appears that Cricket, in anticipation of becoming a part of AT&T, is already raising its roaming rates to levels comparable to those charged by AT&T and Verizon. It is already acting like a duopolist before it even becomes one.

There can be no clearer proof that Cricket's roaming rates will rise dramatically if the AT&T transaction is allowed to proceed without strict and enforceable limits on roaming charges. The rates being offered by Cricket now perhaps anticipate a Commission order requiring it to adhere to its current roaming rate levels if the deal is approved. By setting its rates



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exorbitantly high right now, the purpose of a "maintain the status quo" condition is completely undermined, as are the representations by AT&T that Cricket's pre-closing roaming agreements will be honored for some as yet unspecified length of time.

More fundamentally, the situation presented here underscores the critical problem raised earlier by other petitioners. There is a continuing and accelerating diminution in the number and coverage areas of CDMA carriers other than Verizon and Sprint. Access to fair and reasonable roaming rates is absolutely essential to the ability of independent carriers to be able to offer full service to their customers. With the loss of MetroPCS as a roaming partner, the departure of Revol and ALLTEL, and the proposed loss of Cricket, nothing less than the ability of independent carriers to survive is at stake. The Commission should therefore:

1. prohibit Cricket from offering voice and data roaming rates that exceed its respective retail voice and data rates pending any decision on the pending applications;
2. require Cricket to provide unredacted copies of its current roaming agreements on a confidential basis. (These have already been requested by the Commission, but with critical information redacted.) Without complete information on Cricket's current roaming rates, the Commission cannot meaningfully assess how badly the CDMA market will be hurt by the elimination of Cricket as a roaming partner;
3. require Cricket to submit to the Commission the particulars regarding its roaming rate offerings to Blue Wireless and other carriers from August, 2013 to the present to determine whether Cricket has been raising its historical roaming rates in anticipation of its acquisition by AT&T; and
4. condition any approval of the Cricket acquisition on the provision of roaming rates by the AT&T-owned Cricket for at least five years at levels not exceeding the rates customarily charged by Cricket prior to its entry into the merger agreement.



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Unless these measures are adopted, the proposed transaction cannot be found to be in the public interest.

Sincerely,

/s/

Donald J. Evans  
Counsel for Buffalo-Lake Erie  
Wireless Systems Co., LLC