

LATHAM & WATKINS LLP

January 16, 2014

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

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Re: *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*

Dear Ms. Dortch,

In recent weeks, three *ex parte* letters have been filed in the above-captioned proceeding that raise a number of allegations about the proposed transaction.¹ As discussed below, these allegations have no merit.

First, Youghioghny Communications claims that, pursuant to the transaction, AT&T will obtain a particular patent from Leap that was previously the subject of litigation between Leap and MetroPCS, and that AT&T's acquisition of this patent "could signify an end to the flat-rate business model for wireless services."² However, Leap no longer possesses the right to enforce that patent, and AT&T will not acquire any such right. Youghioghny attached to its letter only MetroPCS's answer to Leap's complaint in that case, but as referenced in both the answer and the original complaint (which Leap now attaches), the patent at issue in that litigation is patent number 6,813,497. Leap assigned that patent to Intel in May 2013, and the assignment

¹ See Letter from Donald J. Evans, Counsel for Youghioghny Communications LLC, to Marlene H. Dortch, FCC, WT Docket No. 13-193 (Dec. 16, 2013) ("Youghioghny Dec. 16 *Ex Parte*"); Letter from Donald J. Evans, Counsel for Flat Wireless, LLC, to Marlene H. Dortch, FCC, WT Docket No. 13-193 (Jan. 6, 2014) ("Flat Wireless Jan. 6 *Ex Parte*"); Letter from Donald J. Evans, Counsel for Buffalo-Lake Erie Wireless Systems Co., LLC, to Marlene H. Dortch, FCC, WT Docket No. 13-193 (Jan. 6, 2014) ("Blue Wireless Jan. 6 *Ex Parte*").

² Youghioghny Dec. 16 *Ex Parte* at 3.

was duly recorded with the U.S. Patent and Trademark Office.³ Accordingly, whatever the merits of Youghioghney's claims about this patent's importance to the flat-rate business model for wireless service, those claims have nothing to do with this transaction.

Second, Flat Wireless makes a variety of allegations about Cricket's ownership interests in Flat that are wrong as a matter of fact and law. Pursuant to the Merger Agreement, Cricket has been using its reasonable best efforts to dispose of its interest in Flat.⁴ Cricket has found a willing buyer for its membership interests, and has proceeded to notify Flat and its Members in accordance with the right of first refusal provisions of the governing LLC agreement.⁵ Although Cricket and Flat are involved in litigation to resolve Flat's claims, which are baseless, Cricket expects that the sale will proceed prior to the close of the merger.⁶

Flat also puts great emphasis on the fact that Cricket holds warrants authorizing it to acquire additional membership units in Flat, and that the warrants cannot be assigned to third parties prior to being exercised.⁷ However, Cricket has irrevocably and forever waived,

³ Patent assignments are recorded at the U.S. Patent and Trademark Office and available on its website. *See* <http://assignments.uspto.gov/assignments/q?db=pat&qt=pat&reel=&frame=&pat=6813497&pub=&asnri=&asnri=&asne=&asnei=&asns> (reflecting the assignment, as Assignment 11, of patent number 6,813,497 from Cricket Communications, Inc. to Intel Corporation).

⁴ As the Flat Wireless Jan. 6 *Ex Parte* notes, Cricket's ownership interest in Flat Wireless recently has declined to just **[BEGIN LEAP HIGHLY CONFIDENTIAL INFORMATION]** **[END LEAP HIGHLY CONFIDENTIAL INFORMATION]** percent, due to a recent equity raise by Flat Wireless. (Cricket did not participate in the equity raise).

⁵ Cricket produced its agreements with Flat Wireless as part of Exhibit 8 to the Response of Leap Wireless International, Inc. to Information and Discovery Request Dated November 8, 2013, WT Docket No. 13-193 (Nov. 22, 2013).

⁶ The Commission has a long-standing policy that it "will not consider arguments in [a merger] proceeding that are better addressed in other Commission proceedings, or other legal fora," including courts. *In re Applications of Craig O. McCaw & Am. Tel. & Tel. Co. for Consent to the Transfer of Control of McCaw Cellular Commc'ns, Inc. & Its Subsidiaries*, Memorandum Opinion and Order, 9 FCC Rcd. 5836, 5904, ¶ 123 (1994).

⁷ *See* Flat Wireless Jan. 6 *Ex Parte* at 2-3. Flat argues that the applicants failed to "disclose the existence of the warrants." *Id.* at 2. But Leap produced its agreements with Flat, including the warrant provisions, as part of Exhibit 8 to its response to the information request. Flat also suggests that Cricket has failed to produce correspondence between Cricket and Flat regarding this dispute, as requested by the Commission's November 8 Request for Information. Flat Wireless Jan. 6 *Ex Parte* at 3. However, all of the relevant correspondence post-dates the information request. *See* Information and Discovery Request Dated November 8, 2013, WT Docket No. 13-193, Instruction 1

disclaimed, and abandoned the warrants, and, therefore, they are of no further force and effect. Cricket has no right to obtain any further ownership in Flat.

Finally, Buffalo-Lake Erie Wireless, a.k.a. “Blue Wireless,” professes concern that the acquisition of Cricket “would eliminate a long-standing nationwide CDMA roaming partner from the industry picture.”⁸ But, as Blue Wireless concedes, it was not a roaming partner of Cricket at the time the transaction was announced,⁹ and neither company’s customers roam on the other’s network.

Blue Wireless has recently requested to negotiate a roaming agreement with Cricket. Cricket has made a good faith offer to provide roaming, and has offered Blue Wireless market rates. Blue Wireless suggests that it may proceed to file a complaint against Cricket because it believes that the offered rates are high.¹⁰ Cricket does not believe that Blue Wireless can demonstrate any substantive merit to such an action, but this point underscores that Blue Wireless has available to it an alternative, more appropriate, procedural framework to air its grievances, rather than seek party-specific relief in a merger review proceeding. In any event, as the applicants previously explained, Cricket is not a significant provider of roaming services, and alternative roaming providers exist across virtually all of Cricket’s network footprint.¹¹ The fact that Blue Wireless had not even requested a roaming agreement with Cricket prior to the announcement of this transaction demonstrates that it does not rely on Cricket for its roaming needs, and is simply seeking to use the pendency of the current transaction to extract concessions.

Please contact the undersigned with any questions.

(calling for production of documents “through the date of the Request”). Cricket intends to produce the recent correspondence, which buttresses Cricket’s position that Flat’s claims have no merit. But Cricket certainly did not err by failing to include in its November 22, 2013 production any correspondence that was not created until after the information request.

⁸ Blue Wireless Jan. 6 *Ex Parte* at 2.

⁹ *Id.*

¹⁰ *See id.*

¹¹ *See* Joint Opposition of AT&T Inc. and Leap Wireless International, Inc. to Petitions to Deny and Condition and Reply to Comments, WT Docket No. 13-193, at 39-41 (Oct. 23, 2013).

LATHAM & WATKINS^{LLP}

Sincerely,

/s/ James H. Barker

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and Cricket Communications, Inc.*

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