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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:

This letter responds briefly to AT&T's January 23, 2014 ex parte response to the Competitive Carriers Association's request for the imposition of LTE roaming conditions on AT&T in connection with any approval of the proposed merger. Because Youghioghney Communications, LLC ("YC") has raised concerns similar to those raised by CCA, we are constrained to comment on AT&T's submission.

AT&T first suggests that a condition on this transaction is not appropriate because aggrieved carriers can simply file a complaint under the procedures established for that purpose. The problem with that approach is that it requires an agonizing case by case examination and investigation of the rates offered, a process which could take years and thousands of dollars of expense by both parties. The crisis in the roaming market, which YC has described fully elsewhere in this Docket, is not unique to any one carrier or class of carriers -- it is systemic. Youghioghney will shortly submit a survey of the roaming market that establishes quite clearly

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that data roaming rates are excessive in the extreme. There is a fundamental market failure in the provision of roaming services that requires immediate regulatory intervention if the crisis is not to worsen. That crisis will be demonstrably aggravated by approval of the proposed transaction, so it is not only appropriate but necessary that the Commission address here the adverse effects on the roaming market which this deal would cause by remediating them to the extent possible.

AT&T claims there is no need for action because Leap has never had any LTE roaming traffic on its network and has not entered into any LTE roaming agreements. This assertion is curious in itself since Leap has rolled out LTE services in large portions of its service territories, including South Texas, territories which cover 21 million POPs by Leap's own count. Leap would have every incentive for its own LTE customers to be able to roam on other carriers' systems when they were outside their home areas. Obviously, if it has no LTE roaming agreements, it cannot entertain such roaming traffic on its own system, nor can its customers roam on other systems. But why doesn't it have LTE roaming agreements?

We can point to two possible reasons. First, Cricket repeatedly and loudly complained to the FCC prior to entering into this deal with AT&T that it was impossible to get reasonable roaming agreements with the major carriers, with Verizon being the major CDMA roaming partner that Leap would have needed to be able to roam on.¹ So the relative dearth of roaming by Leap simply confirms the exact problem highlighted by YC here -- it's impossible to get a fair or reasonable roaming agreement with the majors. Second, Buffalo-Lake Erie Wireless Systems, LLC has pointed out in a January 6, 2014 ex parte submission in this Docket, that it tried to reach a roaming agreement with Leap in the fall of 2013. After much delay, Leap finally offered rates which were not disclosed in the public Docket but which are described by Buffalo-Lake Erie as "absurdly high on their face." Leap appears to have prematurely adopted the duopolist's mantle when it comes to roaming agreements, a posture which not only prevents others from roaming on its network but which also denies its own customers access to other carriers' networks. Under these circumstances, we should not be surprised that Leap is not showing much LTE roaming traffic -- its inability to obtain reasonable LTE rates precisely confirms both the dire past and inevitably gloomy future of LTE roaming access if this deal goes through as proposed.

AT&T also cheerily points to the existence of alternative roaming providers in the market. As many carriers have pointed out, Verizon's roaming rates are astronomically high and there is no reason to believe that AT&T's will be any different. The structural dynamic of the roaming market leaves AT&T and Verizon, which have the most ubiquitous coverage, in a position to dictate roaming terms. They can and do charge whatever they want because there are no practical alternatives for most carriers in many areas. To be sure, Sprint and T-Mobile do

¹ See Petition to Deny of Leap Wireless International, Inc. and Cricket Communications, Inc., WT Docket No. 11-65, 20-23 (filed May 31, 2011).

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offer service in many parts of the country, but AT&T's and Verizon's own advertisements demonstrate how deficient those carriers' coverage areas are. And since the concept of "commercially reasonable rates" is very much in the eye of the beholder and has never been tested or fleshed out by the Commission, there is no compelling legal constraint on AT&T's ability to charge high rates, and then dare smaller carriers to file a complaint. We have no doubt that AT&T will be happy to negotiate an LTE roaming deal, as required by the rules, but it will be at a rate that cannot possibly be financially sustained by the other carrier.² The end result is exactly as though there was a flat denial of roaming service altogether.

Finally, AT&T specifically objects to general application of the "breakup" LTE roaming rate it has agreed to offer Leap in the event this deal is not approved. Here we are first constrained to observe that Leap itself obviously had no confidence whatsoever that it would be able to negotiate a reasonable roaming rate with AT&T in the event of a termination of this deal. Contrary to AT&T's blithe assertions that there will be no problem getting a reasonable roaming rate with it, Leap knew better. That's why it insisted on a guaranteed roaming rate if this deal fell through, since, as AT&T admits, this is a context where Leap actually had something to offer other than just exchanging roaming traffic. So, once again, the very terms of the Leap/AT&T deal offer solid evidence of the inability of carriers -- even those as large as Cricket -- to negotiate a fair LTE roaming deal with AT&T. The LTE roaming rate also signals that the Leap contemplates a more extensive roll out of LTE service to go with its existing LTE facilities in the event the merger is not approved or otherwise is not consummated. Such a roll out would permit its current CDMA customer base to roam on AT&T's large network -- presumably at better rates than Cricket has been able to negotiate with Verizon.

But more importantly, AT&T acknowledges that the breakup Leap roaming rate provides for "steeply discounted LTE roaming services." AT&T Ex Parte at p. 4. It may be, as AT&T indicates, that there are other considerations involved in the breakup deal, but those extra considerations could certainly be reduced to cash values that could then be incorporated into the roaming rate equation. The fact that AT&T is willing and able to offer dramatically lower rates to Leap if this deal blows up is the surest sign that dramatically lower rates could and should also be available to *all* carriers who request LTE roaming. This development, along with the elimination of handset subsidies, would be the catalyst for a resurgence of competition from small or regional independents to the majors, with all the benefits to consumers that such competition implies.

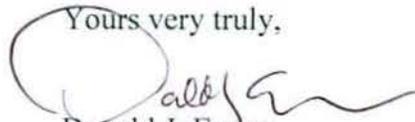
For these reasons, YC continues to urge the Commission to appreciate the gravity of the roaming crisis and take whatever measures are necessary, including either denial of the merger

² We note in this regard that the majors have tended to make 3G service available to resellers but have charged a premium for 4G LTE, effectively reserving this enhanced service to themselves even though it is more spectrally efficient -- and therefore should cost less in a normally competitive market -- than 3G data.

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application or imposition of appropriate conditions that mandate the offering of truly reasonable roaming rates, to prevent the merger from exacerbating the situation further.

Yours very truly,



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