



**REDACTED – FOR PUBLIC INSPECTION**

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February 6, 2014

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**BY ELECTRONIC COMMENT FILING SYSTEM**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

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

Dear Ms. Dortch:

Pursuant to paragraph 12 of the *Second Protective Order*, DA 13-1726, Competitive Carriers Association (“CCA”) is filing one copy of this redacted *Ex Parte* presentation via ECFS in the above-referenced docket. In addition, CCA is also submitting two copies of the highly confidential version of this filing to Brigid Calamis and one copy of the highly confidential version of this filing to the Secretary’s Office via courier.

Please direct any questions in connection with this written *ex parte* presentation to the undersigned.

Sincerely,

Michael Lazarus  
Andrew Morentz  
of TELECOMMUNICATIONS LAW PROFESSIONALS PLLC

*Counsel to Competitive Carriers Association*



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Dear Ms. Dortch:

On February 4, 2014, Steve Berry, President and CEO, Tim Donovan, Vice President, Legislative Affairs, and Sean Spivey, Assistant General Counsel of Competitive Carriers Association (“CCA”), along with Michael Lazarus and Andrew Morentz of Telecommunications Law Professionals PLLC (“TLP”), counsel to CCA, met with Hillary Burchuk, Jim Bird and Joel Rabinovitz of the Federal Communications Commission’s (“FCC’s” or “Commission’s”) Office of General Counsel and Susan Singer, Judith Dempsey and Pardma Sanyal of the FCC’s Wireless Telecommunications Bureau to advocate for the conditions that CCA has urged the Commission to place on any grant of the AT&T/Leap transaction (the “Transaction”) in order to mitigate the competitive harms that an unconditioned grant of the transaction would cause.<sup>1</sup>

During the meeting, CCA discussed its carrier members’ challenges in obtaining access to useable spectrum and obtaining reasonable roaming arrangements, particularly 4G LTE roaming arrangements. CCA noted that the Transaction, if granted unconditionally, would exacerbate these difficulties.

First, AT&T proposes to acquire additional spectrum from Leap that would place it over the FCC’s current spectrum screen in 38 CMAs, covering more than 7 million POPs. In certain markets, AT&T would reach 180 MHz of combined spectrum, a number that far exceeds the applicable screen.

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<sup>1</sup> See e.g., Written Ex Parte Presentation of CCA (filed Jan. 3, 2014); CCA Reply to Joint Opposition to CCA’s Petition to Condition (filed Oct. 31, 2013); CCA Petition to Condition (filed Sept. 27, 2013).



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CCA argued that AT&T has not presented adequate evidence of its need for spectrum in these markets that should justify allowing it to vastly exceed the currently-established screen. To mitigate this negative, transaction-specific harm, CCA urged the Commission to condition any grant of the Transaction on significant spectrum divestitures—at a minimum in any market where the combined AT&T/Leap would exceed the Commission’s current spectrum screen. Relatedly, CCA again urged the Commission to complete its Mobile Spectrum Holdings proceeding as promptly as possible. AT&T has engaged in a massive spectrum acquisition campaign over the past several years, with each acquisition being considered individually rather than cumulatively before the Commission revises its spectrum aggregation limits.

Additionally, CCA discussed the loss of Leap as an actual and potential roaming partner, particularly for 4G LTE roaming. Prior to its proposed sale to AT&T, Leap had constructed an LTE network covering 21 million POPs, giving it the incentive to enter into LTE roaming agreements to expand service to its customers and build upon its significant network investment. Leap also acts as a competitive check on roaming prices, and allows other carriers to have prices to benchmark against – an important function which allows all roaming rates to be lower.<sup>2</sup> AT&T, despite its rhetoric, has evinced no such incentive to enter into LTE roaming arrangements.<sup>3</sup> Consolidating Leap with AT&T would represent a significant lost opportunity for smaller carriers to obtain wider LTE roaming coverage.<sup>4</sup>

At the close of the meeting, the CCA attendees left the meeting so that the TLP attorneys could discuss with Commission staff certain Highly Confidential information placed into the record by AT&T and Leap. During the course of that discussion **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[REDACTED]

**[END HIGHLY CONFIDENTIAL INFORMATION]** Most distressingly, AT&T has called this rate “steeply discounted,” and suggested that other carriers should expect to receive a rate far in

<sup>2</sup> See DEPARTMENT OF JUSTICE & FEDERAL TRADE COMMISSION, HORIZONTAL MERGER GUIDELINES, § 2.1.5 (Aug. 19, 2010) available at [www.justice.gov/atr/public/guidelines/hmg-2010.pdf](http://www.justice.gov/atr/public/guidelines/hmg-2010.pdf) (considering whether the elimination of “a firm that may discipline prices based on its ability and incentive to expand production rapidly using available capacity” may substantially lessen competition).

<sup>3</sup> See Written *Ex Parte* Presentation of AT&T and Leap, at 5 (filed Jan. 23, 2014) (“AT&T *Ex Parte*”).

<sup>4</sup> AT&T *Ex Parte* at 3, fn. 12. Importantly, while Verizon Wireless may overlay much of Leap’s LTE network footprint, the difficulties that CCA members have negotiating LTE roaming agreements with Verizon are well documented. And by AT&T’s own math, the loss of Leap as a potential competitor in the roaming market is significant vis-à-vis other carriers.

<sup>5</sup> **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** [REDACTED] **[END HIGHLY CONFIDENTIAL INFORMATION]**.

<sup>6</sup> **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** [REDACTED] **[END HIGHLY CONFIDENTIAL INFORMATION]**.



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excess of the rate that it has offered to Leap.<sup>7</sup> Since the Commission now has before it, for the first time, an LTE roaming rate offered by AT&T, it should use this information to remedy the significant, transaction-specific harms that will result if Leap is lost as an actual and potential LTE roaming partner.

CCA therefore urged the Commission to adopt the following conditions: (i) spectrum divestitures in all markets where the combined AT&T/Leap exceeds the spectrum screen; (ii) AT&T must commit to offer 3G and 4G LTE roaming services on the same terms and conditions negotiated by competitors with Leap for a minimum of four years and (iii) the rate offered by AT&T to Leap in the LTE roaming agreement negotiated as part of the break-up fee for the Transaction must be offered to all requesting carriers, and the terms and conditions of any roaming agreement should be no less favorable than those offered to Leap.

Please direct any questions in connection with this *ex parte* notification to the undersigned.

Sincerely,

Michael Lazarus  
of TELECOMMUNICATIONS LAW PROFESSIONALS PLLC

cc (via email): Hillary Burchuk  
Jim Bird  
Joel Rabinovitz  
Susan Singer  
Judith Dempsey  
Pardma Sanyal  
Roger Sherman  
John Schauble  
Linda Ray  
Kathy Harris  
Kate Matraves  
David Krech  
AJ Glusman  
Brigid Calamis  
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<sup>7</sup> AT&T *Ex Parte* at 5.