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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 is a partial response to the ex parte submission made by AT&T late on March 6. In the filing, AT&T proposes a significant overhaul of the proposals it has made to date in this proceeding. At the same time, it has urged the Commission to act "expeditiously" on the pending transfer of control applications. The confluence of these AT&T actions puts the Commission and the public (including Youghiogheny Communications, LLC) in the untenable position of having to react almost instantly to a constantly moving target with the prospect of imminent action based on the AT&T filing. There is a basic unfairness to this end-of-the-shot-clock squeeze play that results in petitioners and the public not having an opportunity to meaningfully evaluate whether any actual benefits would result from the proposed "concessions." The Commission too is being hustled into resolving a very complex case without the kind of balanced and considered input from the public that a transaction of this magnitude calls for. In addition, the multi-billion dollar size of this transaction, the five million customers who will suffer as a result, and the permanent diminution in innovation, market disruption and

price competition which will cripple the mobile communications market cry out for review by the Presidentially appointed commissioners who are charged with making these very decisions.

Youghioghney is offering the following comments with the understanding that it has not had the time to thoroughly examine and document several of the defects in AT&T's proposals. But even on the face of what we have been able to examine, the supposed concessions offer no serious benefits.

\$40 Rate Plan: AT&T proposes to make a prepaid \$40 rate plan available with unlimited talk, text and data for 18 months. It had proposed this early on in the process as a temporary palliative for the permanent loss of a very attractive prepaid offering which is one of the keys to Cricket's current competitiveness. (It had originally conditioned the offer on customers maintaining their existing service plans without interruption or suspension, something which is unusual in the prepaid world. This low income customer segment regularly gets disconnected for non-payment, only to reconnect when a paycheck arrives. So it is a necessary condition that this be taken into account and short term disconnection (less than 90 days) should not suffice to cause the customer to lose his \$40 rate plan.) To the extent that the availability of the rate plan is now stripped of those qualifications, as appears from the text of the unqualified commitment, this is an improvement.

The problem with this offer, however, is that we must presume that AT&T's rate will rise as soon as the 18 month period expires. Much of AT&T's justification for the benefits of this transaction is that enormous economies of scale and efficiencies of operation will result, especially by permitting more efficient and rapid roll out of LTE service. Those efficiencies and cost savings should normally result in lower charges to consumers reflecting the lower cost to AT&T. But in the duopolistic or triopolistic world that this merger will create, AT&T will continue to be able to charge monopoly-level rents without the threat of price competition from Cricket. The Commission should therefore have no illusions that the temporary price freeze that AT&T has dangled will result in any long term cost savings to consumers. It should quite properly be viewed as nothing more than an attractive carrot to get the FCC to swallow this fundamentally anti-consumer deal.

Spectrum Divestitures. Attachment B to AT&T's filing lists 12 markets where AT&T proposes to divest itself of 10 MHz of spectrum (in two markets it would divest 20 MHz). We assume these divestiture commitments are made to address both spectrum aggregation (the combined operation would exceed the screen threshold by a wide margin) and the serious market concentration issues revealed by the HHI analysis. The divestitures accomplish neither objective.

We could not examine all the markets, but for the Texas markets where Youghioghney did a spectrum screen analysis, the divestitures leave AT&T over the screen limit in most of them. In Beaumont (CMA 101), even if we apply the 151 MHz screen level espoused by the applicants (rather than the 132 MHz level which reflects the actual on the ground reality), the

combined entity would continue to exceed the screen by 4 MHz. In the McAllen, Brownsville and Lake Charles CMA's (128, 162 and 197, respectively), the spectrum screen excess would drop from a whopping 29 MHz to 19 MHz in the first two and 9 MHz in the last. Those figures are still daunting in terms of the sheer quantum of spectrum assets that AT&T would continue to hold. In the Edwards CMA, the screen limit would continue to be exceeded in some counties but not in others. The bottom line is that while this is movement in the right direction, the modest divestitures do nothing to ameliorate the power that the remaining spectrum holdings vest in AT&T.

In addition, because the spectrum to be divested is both small in quantity and scattered geographically, the spectrum cannot realistically be picked up by a new entrant to initiate aggressive competition in the market. As Youghioghenny has indicated, it would be interested in resuming a highly competitive operation in the South Texas market that would counterbalance the dominant AT&T presence there, much as it did five years ago. But the divestitures are almost calculated to ensure that the spectrum is doled out to existing players who have done little to spur competition there to date.

Finally, the divestitures do not address at all the deeper problem of market concentration in south Texas that will be caused by this merger. As shown in Youghioghenny's original Petition to Deny, the concentration in this submarket is among the highest ever proposed to the Commission, and mere spectrum divestitures leave that concentration intact. In other words, the divestitures accomplish nothing.

Roaming. AT&T commits to maintain Cricket's CDMA roaming plans for so long as AT&T operates a CDMA network. This palliative fails on two fundamental grounds. First, as noted above, temporary measures do nothing to help consumers in the long run, and in this case, even more than the retail rate described above, the roaming rate is likely to disappear sooner rather than later. The switch-out schedule could end CDMA service anywhere from 90 days to a year from consummation of the deal. So this is not only a temporary palliative but a fleeting one. Moreover, the gist of Youghioghenny's objection to this transaction is that the loss of Cricket as a roaming partner will have long term permanent adverse consequences to the ability of independent companies to be able to reach roaming agreements with AT&T-- or anyone else -- in the future. As major roaming partners disappear, the power of the giants to dictate roaming rates gets greater. The drastic long term effects of this deal were foreshadowed by Cricket's offer of high roaming rates (much higher than its traditional rates) to Buffalo-Lake Erie Wireless Systems, LLC last year in anticipation of the merger into AT&T. The writing is not only on the wall, it is in the roaming offers.

Network Deployment. AT&T has committed to roll out LTE service in several markets, including the most highly concentrated markets in South Texas. We assume this is intended to somehow offset the market domination which will now exist. Of course, rolling out LTE to the public is less than ideal if the public is in a position to be gouged on the prices of such service because it has only a single realistic alternative. In addition, AT&T and Cricket have both

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already rolled out LTE service in these markets, according to the coverage maps they provided in opposition to our Petition to Deny. All they appear to be doing is agreeing to provide LTE service to areas that they already provide service to anyway. And even that commitment is hedged by qualifications related to backhaul, zoning, etc. So the reality is that these areas will get LTE exactly when AT&T wants them to get it and no sooner. The offering of a service that it offers now and would have offered anyway should not in any way be deemed to compensate for the permanent loss of competition in that market.

Network Deployment - Spectrum. AT&T promises to provide reports about its plans to deploy Cricket's unused equipment. A commitment to file a report is not the same as a commitment to put the spectrum to use. AT&T can file reports forever and simply warehouse the spectrum without violating any commitments here.

Progress Reports. Progress reports, while useful in keeping tabs on how well AT&T has met its actual commitments, are ultimately toothless. Once the deal has closed, the FCC has little power to enforce the commitments, and as we have seen the commitments are hedged so they can be evaded with ease.

The Commission should not be accept these sleeves out of AT&T's vest as a substitute for firm conditions that are enforceable and that address the very real anti-competitive effects of this deal. The stakes on this transaction for the future of the industry are too high for the regulators to be bought off this easily.

Respectfully submitted,

Youghiogeny Communications, LLC

/s/

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