Written Testimony of

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Telecommunications and the Internet

Committee on Energy and Commerce

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Chairman Markey and Members of the Subcommittee, thank you for the opportunity to testify before you on behalf of my company, Leap Wireless International, Inc. ("Leap"), and its wholly-owned subsidiary Cricket Communications, Inc. ("Cricket"). Leap is a mid-sized wireless carrier striving to offer innovative and affordable wireless service to customers and demographics that have long been under-served by traditional wireless telecommunications carriers. Leap is pleased today to offer its perspective on various spectrum policy issues that you are exploring in the context of the Federal Communications Commission's ("FCC's") recently-completed 700 MHz auction.

I. INTRODUCTION TO LEAP WIRELESS AND CRICKET COMMUNICATIONS

I would first like to note for the Subcommittee where Leap fits within the ecosystem of U.S. wireless carriers, and explain briefly why our company is unique. We are a mid-sized carrier that offers digital wireless service through Cricket under the Cricket® brand. Cricket offers customers unlimited wireless service for a flat monthly rate without requiring a fixed-term contract, credit check or early termination fee.

Leap's services are designed for customers whose basic and advanced wireless needs have not been met by traditional communications companies, and Leap has a unique customer base relative to the average mobile phone user. Based on company surveys, Cricket customers talk an average of 1,500 minutes per month — more than double the wireless industry average. And 65 percent of Cricket customers have "cut the cord" and rely solely on Cricket for their phone service. By comparison, according to a Yankee Group survey, twelve percent of all other U.S. wireless subscribers rely solely on their mobile phone. In addition, 93 percent of Cricket customers reported their Cricket phone was their primary phone, compared to just over half of traditional wireless customers.

But perhaps what makes Cricket most unique is the diversity of our customer base. 62% of Cricket customers are minorities, predominantly Hispanic or African-American, compared with just 17% of traditional wireless carriers. Additionally, 57% of Cricket customers report that they make less than $35,000 per year, whereas just 20% of other wireless carriers report the same. And Cricket customers are relatively young – 62% of Cricket customers are younger than 35 years of age, while the industry average is 39%.

In general, it is fair to characterize Leap as part of the vanguard of wireless carriers leading the development of new product and service approaches, and expanding wireless service coverage to constituencies that may not heretofore have had access to wireless service.

II. THERE IS A CONTINUED NEED FOR ACCESS TO SPECTRUM TO SPUR COMPETITION AND INNOVATION FROM SMALL AND MID-SIZED CARRIERS, AS WELL AS NEW ENTRANTS

As a provider of wireless telecommunications, radio spectrum, of course, is the raw material on which we have built our business. It is the resource that our company requires to survive and expand. Historically, Leap has been a strong supporter and participant in FCC spectrum auctions, participating significantly in various Personal Communications Services ("PCS") auctions (for example, Auction Nos. 22 and 58), and last year investing almost one billion dollars in the FCC's auction of Advanced Wireless Services ("AWS") licenses (Auction No. 66). Unlike many other carriers, Leap presently is investing significant additional resources to clear AWS spectrum of incumbent federal government users and to launch service in new markets as quickly as possible. In fact, Leap launched service on AWS spectrum just last week in Oklahoma City, Oklahoma, and has announced aggressive plans to launch several more AWS markets in 2008.

For Leap and consumers generally, all of these investments are paying off in terms of new competition and innovation in the wireless marketplace. As of December 31, 2007:

- Cricket service is offered in 23 states to more than 3 million customers;
- Cricket and two joint ventures that also offer Cricket service own wireless licenses covering an aggregate of 186.5 million POPs; and
- the combined network footprint in Cricket's operating markets covers approximately 54 million POPs.

We believe this kind of growth, combined with our unique customer demographics, is illustrative of the kind of wireless competition that Congress and the FCC desire to promote. Leap disciplines prices in every new market that it enters, and indeed, we believe that the recent proliferation of more choices in terms of flat-rate pricing plans from some of the traditional wireless carriers is directly attributable to our presence.

Nonetheless, we have been concerned in recent years with the ever-increasing consolidation of spectrum assets and market share into the hands of the nation's largest wireless carriers, and the consequences that this portends for Leap and other small and mid-sized carriers. As expert economists observed on the eve of the commencement of the 700 MHz auction, since the removal of spectrum caps in 2003, the commercial mobile radio services industry in the United States has steadily consolidated, with two firms – AT&T and Verizon (ironically the eventual dominant winners in the auction) – accounting for 53% of all industry revenue, and four firms accounting for 90%.[1]

At Leap, we thrive on competition – but we must have access to spectrum in order to continue to compete and innovate. Furthermore, as the data bandwidth demand from users

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[1] P. Crampton, A. Skrzypacz and R. Wilson, "The 700 MHz Spectrum Auction: An Opportunity to Protect Competition in a Consolidating Industry" (November 13, 2007), at 2.

increases with the deployment and use of new innovative wireless applications, new technology will need to be deployed. As an example, in 4G wireless broadband solutions, the data bandwidth increases, and the cost to deliver data decreases proportionally, with the increase of available spectrum. Some estimate that 4G wireless broadband will require access to at least 20 MHz of spectrum to provide optimized and cost-effective wireless service. Thus, smaller competitive carriers will need to upgrade their networks and obtain access to more spectrum in order to remain viable.

Furthermore, as I will touch upon below, the nation's largest wireless carriers are not only gaining tremendous positions in increasingly scarce spectrum assets, they are also in many cases denying automatic roaming altogether or on reasonable terms to other wireless carriers, in an effort to weaken the service offerings of their competitors, and in spite of the fact that they relied on such agreements to expand their own networks.

As Congress and the FCC continue to monitor the wireless marketplace, we believe it is critically important to remain vigilant with respect to auction and service rules, and aftermarket transactions, which threaten competition in the wireless marketplace.

III. LESSONS FROM THE 700 MHZ AUCTION

Lessons learned from the 700 MHz provide examples as to why such vigilance is required. By some measures, the 700 MHz auction was successful. The auction raised a record $19.592 billion for the U.S. Treasury. It also was laudably ambitious in its attempt to advance wireless policy objectives in new ways, experimenting with new auction procedures on a grand scale, and introducing new service rules on the C Block intended to advance open platform policies.

But the 700 MHz auction also exhibited — and amplified — deeper, disturbing trends in wireless. The nation's two largest carriers, Verizon Wireless and AT&T, significantly increased their vast spectrum holdings and accounted for approximately $16.3 billion of the approximate $19.6 billion of all auction proceeds. In the mean time, mid-sized carriers were virtually shut out of the 700 MHz auction: Leap and Alltel won no licenses, while MetroPCS obtained one.

In this auction, in retrospect, there were limited bidding opportunities for small and mid-sized carriers, and little headway was made in introducing new entrants and new competition in wireless. The creation of large geographic areas in the 700 MHz C Block, along with the use of combinatorial bidding procedures for these licenses, made it difficult for smaller and mid-sized carriers to gain access to this prime spectrum.

Leap believes that future auctions can strike a better balance in advancing the Congressionally-mandated goals of avoiding excessive concentration in the assignment of radio spectrum licenses, and of disseminating mutually exclusive spectrum licenses among a wide variety of applicants.[2] This is an important policy goal because, in the longer term, the opportunities on the horizon for small and mid-sized carriers to gain access to spectrum, either in an auction or in the aftermarket, will be fewer and fewer.

IV. MEASURES TO PROMOTE FURTHER WIRELESS INDUSTRY COMPETITION

As Congress and the Commission debrief together and with industry with respect to wireless spectrum trends and policies, Leap has at least three recommendations that it believes would preserve and promote continued competition and innovations in wireless.

A. Comprehensive Review of the D Block

First, Leap supports a comprehensive "top-to-bottom" review of policies and service rules surrounding the 700 MHz D block. There is no question that the complex public/private partnership framework surrounding this spectrum block, and features such as the extremely

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[2] 47 U.S.C. § 309(j)(3),(4).

stringent geographic build out requirements, made this spectrum highly unattractive even to the auction's very largest participants.

Leap believes that the public interest would be well served by reconsidering how to best serve the needs of public safety users, and how those needs can be made to mesh better with the investment and operational requirements of the commercial sector. For example, Congress and the FCC should examine whether breaking the D Block into smaller licenses makes better policy sense. If it preserves a public safety component to this spectrum, the FCC should consider allowing several different network providers to work with the public safety community. The Commission should also explore whether its aggressive buildout requirements for this spectrum should be retained, and most important, whether Verizon or AT&T should be able to bid for this spectrum in the future, given the significant 700 MHz assets they have already procured.

B. Future Use of Smaller Geographic Service Areas

Second, the 700 MHz auction results plainly demonstrated that the lion's share of spectrum carved into large geographic regions quickly move beyond the reach and resources of small and mid-sized bidders at auction.

Leap believes that in future auctions, balance among bidder interests will be far better served by licensing spectrum blocks uniformly on an Economic Area ("EA") basis. 176 EAs will ensure that larger carriers begin with area sizes that make sense as a starting point for aggregation, while smaller carriers will still be able to gain access and compete at auction on a much more meaningful basis than large regional areas or nationwide licensing allow.

C. The Need for Automatic Roaming Without Exception

Third and finally, there is a real basis for concern that the continued aggregation of spectrum resources will only exacerbate anti-competitive behavior by the nation's supercarriers, and in particular, anti-competitive roaming practices. This is a related problem that Congress and the FCC must consider as they examine wireless and spectrum policy issues flowing from recent auctions.

Automatic roaming agreements play a critical role in filling the inevitable gaps that exist in *every* carrier's network – they form the "safety net" that permits all consumers to obtain geographic wireless service coverage. Last year, the FCC appeared to affirm the importance of automatic roaming, but crafted an "in-market" exception that allows a carrier to refuse roaming service in any area where the requesting carrier merely has spectrum usage rights – regardless of the time it takes to build out particular markets, or indeed, whether it is even possible to build out licensed spectrum.[3]

The presence of this in-market exception may have had direct consequence on small and mid-sized bidder behavior in the 700 MHz auction. Non-nationwide carriers knew that they could be risking the viability of their current roaming agreements by acquiring spectrum usage rights in new markets – a sub-optimal public policy outcome from an auction and competition standpoint. More generally, carriers small and large, rural and urban, incumbent and competitive,[4] have agreed in connection with pending reconsiderations of the roaming rule that the FCC should close this loophole, which threatens to make the automatic roaming obligation on the books all but meaningless. Tellingly, only Verizon and AT&T support affirmance of the current rule.

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3 Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, WT Docket No. 05-265, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 07-143 (rel. Aug. 16, 2007), *summarized at* 72 Fed. Reg. 50,064 (Aug. 30, 2007) ("*Roaming Order*").

4 Carriers and organizations supporting elimination of the in-market exception include Leap, MetroPCS, Sprint, T-Mobile, United States Cellular Corporation, SpectrumCo (a joint venture that includes cable operators Comcast, Time Warner and Cox), Southern Linc, the Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO") and the Rural Telecommunications Group.

As Congress and the FCC evaluate events like the 700 MHz auction, where the increasing market power of the nation's largest wireless carriers is in profound evidence, it should consider the further implications for wireless consumers that require roaming services. The "safety net" that ubiquitous roaming promises is more than just a metaphor for ensuring seamless coverage. Without an automatic roaming obligation, for example, there is no guarantee that consumers traveling outside their carrier's facilities footprint will receive emergency alerts, as they ride on the SMS platform. Whether it is seeking help with car trouble—or even contacting family and receiving critical information in the wake of a hurricane or terrorist attack[5]—no consumer "should have to see the words 'No Service' on their wireless device"[6] in a time of need. Consumers simply should not be stranded when they travel away from "home."

Anticompetitive roaming practices lead to supra-competitive prices that harm all consumers but disproportionately burden disadvantaged and rural populations. In the end, the in-market exception encourages such practices, forcing consumers to pay more for less coverage.

And the same of course is true for data roaming. The 700 MHz spectrum is well-configured for broadband wireless service delivery, but concentrated in the hands of the nation's two largest carriers, the prospect of new wireless broadband competition emerging from the use of this spectrum is remote. Furthermore, such concentration will increase incentives for these largest of carriers to pull back even further in supporting roaming activity from competitive network providers. Automatic roaming for data services is integral to future wireless competition – and again, with no "in-market" exceptions.

I urge to you to take an active role in considering these vital consumer issues.

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5 *See Roaming Order*, Statement of Commissioner Deborah Taylor Tate (roaming can benefit "public safety, or even homeland security").

6 *Roaming Order*, Statement of Commissioner Jonathan S. Adelstein, Approving in Part, Concurring in Part.

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Chairman Markey, I thank you and the Subcommittee again for allowing Leap to express its views on these important topics.

Attachment A

Written Testimony of Robert J. Irving, Jr.
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Summary of Points

- Leap/Cricket is a mid-sized carrier that offers customers unlimited digital wireless service for a flat monthly rate without requiring a fixed-term contract, credit check or early termination fee.

- Leap/Cricket demographics are unique: 62% of Cricket customers are minorities, predominantly Hispanic or African-American; 57% of Cricket customers make less than $35,000 per year; 62% of Cricket customers are younger than 35 years of age.

- Leap is representative of the kind of competition that small and mid-sized carriers bring to the wireless marketplace. Leap is growing rapidly, offering service in 23 states to more than 3 million customers, but it requires additional spectrum in order to continue to grow, innovate and compete. Consolidation of spectrum and market power by the nation's largest wireless carriers threatens such growth, innovation and expansion.

- In the 700 MHz auction, the nation's two largest carriers, Verizon Wireless and AT&T, significantly increased their vast spectrum holdings and accounted for approximately $16.3 billion of the approximate $19.6 billion of all auction proceeds. Overall, policymakers should take additional measures to introduce new entrants and new competition into the wireless marketplace.

- As Congress, the FCC and industry debrief on where to go from here, Leap encourages all to be mindful of measures that could promote competition in the future. These include:

    - ❖ A comprehensive review of the 700 MHz D Block

    - ❖ More prevalent use of smaller geographic service areas, such as Economic Areas, in future auctions

    - ❖ Elimination of the "in-market" exception to the automatic roaming obligation, which is (i) uniformly opposed by the wireless industry except for AT&T and Verizon; (ii) vital to protect the "safety net" of consumers' ability to enjoy seamless wireless coverage, and (iii) threatened by these supercarriers' massive additional increases in spectrum as a result of the 700 MHz auction.